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Canon Law in Post-Imperial Gaul

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Abstract

This dissertation traces the transition of 'canon law', the episcopate's own legislation on matters of ecclesiastical organisation, clerical discipline and select aspects of lay religious activity, from the context of a functioning Roman Empire and into the successor kingdoms, which dominated Gaul in the fifth and sixth centuries. Ecclesiastical canons developed in the early fourth century from the 'internal' rules of minority Christian communities, and by the fifth had matured into organisational and disciplinary norms deeply intertwined with Empire's own institutions and legal system. This dissertation examines the effect the 'ending' of the imperial system had upon canon law in Gaul. It seeks to reintegrate canon law into the extensive historiographical debates over the utility of Late-Antique normative legislation, as a source capable of illuminating the myriad social, economic and institutional transformations underway in Gallic society. It will attempt to highlight and above all to explain changes in the form, content and application of conciliar canons, the key component of canon law in this context, in terms which emphasize the shifting institutional and legal-cultural landscape.

In particular, this dissertation will argue that the period c.570 – 614 saw the manifestation of an ecclesiastically-driven legal culture, which arose from the relatively unique matrix of political and institutional conditions presented by Merovingian Gaul. It will also seek to highlight previously undervalued historical contingencies, such as the impact upon legal culture of 'Arian' rulership in the first generation of Gallic successor states, and the complex interplay between political fragmentation on the one hand and the survival of ecclesiastical institutions and legislation which were intrinsically pan-Mediterranean.

I would like to thank my supervisors, Professors Peter Heather and David D'Avray, the London Arts and Humanities Partnership, Professors Stefan Esders and Stefan Rebenich, who were generous hosts and interlocutors in Berlin and Bern respectively, Professors Catherine Cubitt and Caroline Humfress, who agreed to examine this dissertation, and finally, for their fathomless support and love, Edith and my parents, Jane and John.

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Abbreviations

Brev.	*Breviarium Alarici* or *Lex Romana Visigothorum,* ed. G. Hänel (Berlin/Leipzig, 1849).
CCSL	*Corpus Christianorum: Series Latina* (Turnhout).
CE	*Codex Euricianus*, K. Zeumer, *Leges Visigothorum*, MGH *Leges Nationum Germanicarum* 1.1 (Hanover/Leipzig, 1902), 1 – 32.
CTh	*The Theodosian Code and Novels, and the Sirmondian Constitutions,* trans. and ed. C. Pharr, in collaboration with T. Sherrer Davidson and M. Brown Pharr. With an introduction. by C. Dickerman Williams. (London, 1952).
EOMIA	*Ecclesiae Occidentalis Monumenta Iuris Antiquissima* 2 tomes., C. H. Turner, (1899 - 1939).
JRS	*Journal of Roman Studies.*
JTS	*Journal of Theological Studies.*
LC	*Liber Constitutionum*, L. R. de Salis, *Leges Burgundionum,* MGH *Leges* I.2.1 (Hanover, 1892).
LH	*Gregorii Episcopi Turonensis Libri Historiarum X,* MGH Scriptores Rerum Merowingicarum I.I B. Krusch and W. Levison (Hannover, 1937-51) (= Gregory LH Krusch/Levison).
LRE	*The Later Roman Empire 284 - 602, A Social Economic And Administrative Survey*, 2 Vols., A. H. M. Jones, (Oxford, 1964).
LRB	*Lex Romana Burgundionum* L. R. de Salis, *Leges Burgundionum,* MGH *Leges* I.2.1 (Hanover, 1892).
MGH	*Monumenta Germaniae Historica* (Berlin, Hanover, and Leipzig).
Pactus	*Pactus legis Salicae*, MGH LL nat. Germ. 4.1, Karl August Eckhardt ed., (Hannover, 1962).
PL	*Patrologia Latina*, ed. J. P. Migne (Paris).
Sirm.	Sirmondian Constitutions (see Pharr above).
ZRG	*Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* RA *Romanistische Abteilung* GA *Germanistische Abteilung* KA *Kanonistische Abteilung.*

Tables

Maps

Unifying Councils of the Merovingian Kingdoms, pp 233 – 238; including,

- Attendance at Orleans 511
- Attendance at Orleans 533
- Attendance at Orleans 541
- Attendance at Orleans 549
- Attendance at Macon 585
- Attendance at Paris 614.

Note on quotations

Unfortunately, due to constraints of space, it has not been possible to include verbatim quotations of all legislation and non-legislative sources. I have included text from the most essential laws and canons where possible, but have been forced to summarize in many instances. For most non-legal texts, for example Gregory of Tour's *History*, I have opted to quote from Latin editions, since my argument often involves highlighting parallels in terminology between contemporaneous legislative and literary sources. Merovingian royal legislation, canons, epistles and the works of Gregory of Tours can be accessed at the *Monumenta Germaniae Historica* site: [http://www.dmgh.de].

Introduction

In the spacious, modernist *Haus Potsdammer Straße*, located in the Prussian State Library in Berlin's *Kulturforum*, is stored an eighth-century manuscript, the *Codex Remensis*.[1] Its folios preserve one of roughly eleven compilations of canon law, (norms which governed religion and 'the Church', see below), identified as having been produced in sixth-century Gaul.[2] Most of the 'rules' contained within the Collection were generated by church councils of varying sizes, held at locations spanning the Mediterranean Basin over the two centuries preceding the compilation of the collection. They are interspersed with other assorted materials, including interpretations of ecclesiastical law authored by popes, legislation issued by Gothic kings, a definition of faith, an embellished list of Gallic provinces and an edict of the Frankish King Chlothar II (r.584-629), issued shortly after a great church council at Paris in 614, whose canons are listed beneath.

The manuscript has been damaged in places by water and rot, whose obscuring effects have been substantially worsened in parts by the addition of a reactive agent, presumably applied in an attempt to reveal underlying script.[3] Unfortunately, the folios worst affected bear the sole surviving copy of *Edictum Chlotharii*, of which only 18 fragmentary clauses

[1] Berlin, Staatsbibliothek Preußischer Kulturbesitz, Phill. Lat. 1743; cf. V. Rose, *Verzeichniss der Lateinischen Handschriften der Königlichen Bibliothek zu Berlin,* (Berlin,1893), 171-79; L. Kéry, *Canonical collections of the early Middle Ages (ca. 400-1140) : a bibliographical guide to the manuscripts and literature* (Washington, 1999), 50.

[2] The others include: the so-called Second Council of Arles [henceforth, Arles II], the *Statuta Ecclesiae Antiqua*, the *collectiones Corbeiensis*, *Lugdunensis*, *Colonensis, Sancti Mauri, Albigensis, Pithouensis, Laureshamensis*, additionally the *Collectio Vetus Gallica*; for bibliographies on all, see below and Kéry, *Collections*.

[3] Stefan Esders, whilst very kindly showing me the MS, suggested this might have been added during the nineteenth century, while the MS was part of Sir Thomas Phillips' collection. H. Mordek, *Bibliotheca capitularium regum Francorum manuscripta*, MGH Hilfsmittel 15 (München, 1995), 56.

are legible.[4] This is particularly regrettable, since, as will be outlined below, the contents of the Edict provide rare evidence for an extraordinarily fertile few decades of law-making activity in post-Roman Gaul around the turn of the seventh century and, furthermore, they illuminate the prominent role played by the Gallic episcopate in shaping these legislative efforts.

This dissertation seeks to explain the changes to 'canon law' in Gaul, which occurred over the fifth and sixth centuries, a period in which the western Roman Empire was wracked with political and fiscal crises before 'fragmenting' into competing 'successor kingdoms'.[5] 'Canon law' as an historical phenomenon is notoriously 'difficult to define'.[6] The original Greek term, '*κανών*', and its Latin derivation, '*canon*' (sometimes synonymous with '*regula*'), was used to refer to three distinct concepts: the entire accepted corpus of Christian holy literature, individual summaries of belief and, finally, disciplinary rules.[7] This dissertation is concerned with the latter category, ecclesiastical disciplinary norms, and with changes in their content, status and wider social and institutional function as 'legislation'.

Individual disciplinary canons[8] were written largely by clerics (normally either bishops in council or occasionally popes, see Chapter One) and defined key standards of social behaviour and religious practice expected from the different grades of clergy, principles of ecclesiastical

[4] *Chlotharii II Edictum*, ed. A Boretius, *Capitularia regum Francorum*, MGH LL Capitularia (1896), I, 20-23.
[5] Those of the Visigoths, Franks, Burgundians and Ostrogoths. See Chapter Two.
[6] J. Nelson, 'Law and its applications' in T. Noble and J. Smith (eds.), *The Cambridge History of Christianity, vol. 3: Early Medieval Christianities, c. 600 - c. 1100* (Cambridge, 2008 / Online publication 2010), 299 – 326.
[7] H. Ohme, *Kanon ekklesiastikos: die Bedeutung des altkirchlichen Kanonbegriffes* (Berlin/New York, 1998) identifies these meanings and focuses upon the shift from summaries/tenets of belief to disciplinary 'law'. He sought to mediate between theologians on the one hand and philologists, legal, and institutional historians on the other who had tended to focus upon one or the other. (Discussed at greater length in Chapter One).
[8] Hereafter 'canon' is used in the sense of Ohme's third category unless otherwise specified; 'canon law' as an imperfect general term for these disciplinary canons as part of a functioning 'system' of law, see below.

organisation, and forms of religious behaviour expected from the laity. This starting definition is necessarily vague for two reasons. Firstly, the meaning of the word 'canon' changed over the period in question and, secondly as this introduction will outline shortly, because modern historiographical divides have resulted in different scholars working under different sets of assumptions about the nature and significance of 'canon law'. This dissertation seeks to highlight and above all to explain shifts in the function of canons in relation to society and in comparison to other contemporaneous forms of law.

In terms of chronological scope, while the first chapter will address pre-Constantinian legislation, the key period of focus is from roughly the Rhine invasions of 405/6, until the Council of Paris (October 614) and the promulgation of Chlothar II's Edict (one week later). 614 is taken as the termination point because the council of Paris effectively marks a high-water mark for a 'long' century of remarkable conciliar, legislative activity in Gaul; whereas the seventh century provides (arguably) less evidence for ecclesiastical legislative activity and, perhaps more importantly, new influences upon Gallic ecclesiastical culture, such as Irish penitential regulations, and secular legislation, which require their own treatment beyond the scope of this dissertation.[9]

The brief introduction to the *Codex Remensis* is intended to highlight the fundamental methodological challenges inherent to an exploration of canonical legislation in fifth- and sixth-century Gaul. Firstly, 'canon-law collections' (nearly all also contain 'secular' laws and assorted

[9] On quantity of legislation produced see chapters Three and Four. On the presence of penitential norms in Gallic canonical compilations from the *Hibernensis* onwards, see Fournier-Le Bras, *Histoire des collections canoniques en Occident depuis le Fausses Décretales jusqu'au Décret de Gratien*, 2Bde. (Paris, 1931-32), 90ff. 'New' types of source survive from- and historical concepts dominate the seventh century in comparison to the sixth; for overviews, see A.C. Murray, 'Merovingian Immunity Revisited', *History Compass* 8 (2010), 913 – 28; R. Kaiser, 'Königtum und Bischofsherrschaft im frühmittelalterlichen Neustrien', in F. Prinz (ed.) *Herrschaft und Kirche: Beiträge zur Entstehung und Wirkungsweise episkopaler und monasticher Organizationsformen* (Stuttgart, 1988), 83 – 108 on the '*Bistumsrepublik'*. These will nevertheless be addressed below.

other materials) are overwhelmingly preserved in manuscripts copied in subsequent centuries. Compilations which survive from the sixth and seventh centuries were, by definition, only those of interest to monastic and episcopal archivists of the Carolingian era (the *Codex Remensis*, for example, is littered with ninth-century marginalia).[10] As has already been highlighted, the corresponding legislation of Merovingian kings is even less well preserved and the conclusions made below about chronological shifts in legislative activity can therefore only be tentative.[11]

Secondly, 'canon law' for sixth-century contemporaries was always a composite entity, consisting of numerous types of normative literature, with numerous stages of compilation and synthesis carried out under different institutional, social, political and religious circumstances. Often, its components were mislabelled, and each generation had an incentive to cast their own contributions as ancient, authoritative norms.[12] It is therefore difficult to un-pick what 'canon law' looked like at different stages of its development.

Notwithstanding these complexities, in many respects Gallic canonical legislation exhibited a remarkable degree of continuity throughout a period in which other forms of law (and society in general) were in flux. As will be outlined below, ecclesiastical councils continued to meet regularly. They often reiterated statements of belief and disciplinary rules resembling those of preceding centuries. The legislation of sixth-century Gallic church councils was explicitly 'conservative' aiming to preserve and transmit what the attending bishops understood as (or

[10] The only Merovingian-era manuscripts from Gaul containing canon-law collections are: *Coloniensis* 212 ('Cologne Collection'); *Parisinus Latinus 12097* ('Corbie'); Tolosanus 364 ('Albi'); Berolinus 1745 ('Lyon'), R. Mathisen, 'Church Councils and Local Authority: The Development of Gallic Libri canonum during Late Antiquity', in C. Harrison, C. Humfress, and I. Sandwell (eds.), *Being Christian in Late Antiquity: A Festschrift for Gillian Clark* (Oxford, 2014), 179.

[11] On Merovingian legislation, see chapters Two and Four.

[12] For example, see below on the so-called *Statuta Ecclesiae Antiqua*. *Geschichte der Quellen und der Literatur des Canonischen Rechts im Abendlande bis zum Ausgange des Mittelalters,* F. Maassen, (Paris, 1870), 382; C. Turner, 'Arles and Rome, The first developments of Canon Law in Gaul' *JTS* 17 (1916), 237; C. Munier, *Les Statuta Ecclesiae Antiqua* (Paris 1960); Mordek, *Kirchenrecht*, 51f.

projected to be) apostolic tradition.[13] In studies of Late Antiquity generally, 'the Church' is often seen as a bastion of continuity, not least as a crucible for the transmission of Roman law and legal culture into the Medieval period.[14] Nevertheless, there were important and as yet insufficiently recognised changes in 'canon law' as it transitioned from an imperial to a post-imperial environment.

The impression of continuity in canon law between the imperial and post-imperial periods has been magnified by two historiographical trends: firstly, the study of canons has until relatively recently remained the preserve, more or less, of theologians, 'canonists' or ecclesiastical historians primarily interested in the development of the Catholic Church and/or canon law as it existed in later centuries.[15] Traditionally, such works have tended to focus upon the evolution of the legislation per se and therefore also upon its relatively more influential components;[16] i.e.

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[13] Merovingian-era councils frequently invoked 'apostolic' authority in their canons. See MGH, concil. I, pp. 47, 48, 62, 162, 190, 216, 221. (and 'sede apostolica' for Rome, 46, 56, 57, 74, 87, 101, 129; cf. Appendix 2).

[14] On the shortcomings of 'the Church' as an historical term for this period, see M. de Jong, 'The state of the church: ecclesia and early medieval state formation', in W. Pohl and V. Wieser eds. *Der frümittelalterliche Staat - Europäische Perspektiven* (Vienna, 2009), 241 - 254. On 'the Church' as a crucible for Roman Law and culture, see A. Angenendt, 'Kirche als Träger der Kontinuität', in *Vorträge und Forschungen: Von der Spätantike zum frühen Mittelalter: Kontinuitäten und Brüche, Konzeptionen und Befunde*, Vol. 79 (2009), 101 - 141.

[15] See H. Siems, 'Die Entwicklung von Rechtsquellen zwischen Spätantike und Mittelalter' in *Vorträge und Forschungen: Von der Spätantike zum frühen Mittelalter: Kontinuitäten und Brüche, Konzeptionen und Befunde*, Vol. 79 (2009), 245 – 285 for a survey of the divisions and contours within the study of *frühmittelalterliches Recht*. Foundational works on Early-Medieval ecclesiastical law include: K. J. Hefele, *Conciliengeschichte*, (Freiburg im Breisgau, 1873-90) with English translation: *A History of the Councils of the Church*, Trans. W. R. Clark, (Edinburgh 1883-96); E. Loening, *Geschichte des deutschen Kirchenrechts*. (Strasbourg, 1878); P. Hinschius, *Das Kirchenrecht der Katholiken und Protestanten,* IV vols. (Berlin, 1869 - 1897); A. Hauck, *Kirchengeschichte Deutschlands. V Bände* (Leipzig, 1903 - 1912); H. Barion, *Das fränkisch-deutsche Synodalrecht der Frühmittelalters* (Bonn, 1931).

[16] For example, this is true for most of Gaudemet's publications: e.g. in both early and late works, J. Gaudemet, *Église et cité: histoire du droit canonique* (Paris, 1994); J. Gaudemet, *La formation du droit séculier et du droit de l'Église aux IVe et Ve siècles* (Paris, 1957), incorporates commentary on patristic writing,

'ecumenical' councils held under the Roman Empire, which established key points of doctrine, clerical discipline and ecclesiastical organisation, and the great systematisation(s) of canon law carried out in the twelfth century by 'Gratian', which reordered all preceding materials and defined the genre for centuries to come.[17] From the intervening period, Carolingian legislative and compilation activity has received far more attention than that of the Merovingian era, not least because of the richer manuscript evidence.[18] The same is true for the legislative output of popes, who in later centuries acted as 'legislators', a capacity whose origins can be traced to the last quarter of the fourth century although, as we shall see, which was not yet 'fully-fledged' in relation to Merovingian Gaul.[19] This has had the effect of shifting attention away from legislative developments in the successor kingdoms, which are often regarded as peculiar appendices to the development of 'mainstream' canon law.[20] Secondly, the rise of cultural history in the latter decades of the twentieth

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such as that of Augustine which was only incorporated into 'canon law' in later centuries.

[17] A. Winroth, *The Making of Gratian's Decretum* (Cambridge, 2000).

[18] J. Brundage, *Medieval Canon Law*, (London, 1995), the most accessible, English-language introduction to the subject, disparages Early-Medieval canon law as 'inward-looking', 'contradictory, obsolete, unworkable'. (p.25). G. Halfond, *The Archaeology of Frankish Church Councils, AD 511 – 768*, (Leiden, 2010), 'Introduction' and 46-57 on the disparity of sources (one of his aims is to challenge the divided periodization); also R. McKitterick, *The Frankish church and the Carolingian reforms, 789 - 895*, (London, 1977); ibid. 'The scriptoria of Merovingian Gaul: a survey of the evidence', in H. Clarke and M. Brennan eds., Columbanus and Merovingian Monasticism (Oxford, 1981), 173-207, ; ibid. "Knowledge of Canon Law in the Frankish Kingdoms before 789", *Journal of Theological Studies* 36 (1985). J. Nelson, 'On the Limits of the Carolingian Renaissance', *Studies in Church History* 14 (1977), 51-67, reprinted in J. Nelson, *Politics and Ritual in Early Medieval Europe*, (London, 1986), 49 – 67. The ninth-century Pseudo-Isidore Decretals continue to receive enormous attention, e.g. proceedings of Ubl and Ziemann's 2013 colloquium published as, K. Ubl and D. Ziemann, *Fälschung als Mittel der Politik? Pseudoisidore im Licht der neuen Forschung* (Hannover, 2015).

[19] See chapters One and Five. For introductions to the literature, D. Jasper & H. Fuhrmann, *Papal Letters in the Early Middle Ages* (Washington DC, 2001); D'Avray, Stages; For the 'decretals' themselves, P. Jaffé, & N. Herbers, *et al.,* (2016) *Regesta Pontificum Romanorum ab condita ecclesia ad annum post Christum natum MCXCVIII),* 3rd edn, *I (a S. Petro usque ad A. DCIV)* (Göttingen).

[20] See Hinschius' discussion of Frankish and Visigothic disciplinary canons, below.

century, often linked with the seminal works of Peter Brown, has tended to stress continuity and gradual transformation over the period, whilst also diverting energy and attention away from the study of institutional or legal developments.[21]

Given the continuing influence of nineteenth- and twentieth-century surveys of canon law, our expectations regarding what 'canon law' was and what kinds of questions 'canons' might legitimately or typically have tackled are still subject to a kind of teleological distortion, masking some of the more unique features of canonical legislation from towards the end of the sixth century in Gaul, which will be highlighted shortly.

By contrast, the study of 'secular' legislation, in particular that of Early-Medieval successor kingdoms, has been substantially transformed in recent decades by (primarily Anglophone) historians approaching normative legislation with a deep degree of scepticism regarding its ability to illuminate underlying societal or institutional change, and a determination to place more weight upon 'descriptive' documentary sources, such as charters.[22] Curiously, while Wormald and his

[21] I. Wood, 'The Transformation of Late Antiquity 1971 - 2015, *Networks and Neighbours Journal* (https://nnthejournal.wordpress.com ; accessed 27th November 2017). P. Brown, especially *Through the Eye of a Needle: Wealth, the Fall of Rome, and the Making of Christianity in the West, 350 — 550 AD* (Princeton NJ, 2012); and, *The Ransom of the Soul, Afterlife and Wealth in Early Western Christianity* (Cambridge, 2015); R. Mathisen, *Ecclesiastical Factionalism and Religious Controversy in Fifth Century Gaul*, (Washington, 1989) remains (largely) agnostic about institutional change (he asserts the arrival of successor kings fundamentally altered episcopal power in Gaul, p.XV ending their 'inordinate degree of control'), instead focussing on 'factionalism'.

[22] P. Wormald, *Lex Scripta* and *Verbum Regis*: Legislation and Germanic Kingship, from Euric to Cnut', in P. Sawyer and I. Wood (eds.), *Early Medieval Kingship* (Leeds, 1977), 105-139 led the charge against the *historische Rechtsschule* and its proponents' alleged overconfidence in their ability to extrapolate from legislation as an historical source. Although he tempered some of his conclusions about the 'ideological' nature of legislation in *The Making of English Law Volume One: King Alfred to the Twelfth Century*, (Oxford, 1999). Wormald's skepticism permeated much (but not all) of the 'Bucknell Group's' publications. See, W. Davies and P. Fouracre, eds., *The Settlement of Disputes in Early Medieval Europe* (Cambridge, 1986): see also Davies and Fouracre, eds., *Property and Power in the Early Middle Ages* (Cambridge, 1995), and Davies and

respondents both within and without the 'Bucknell Group' took aim at some of the more over-confidant conclusions drawn by proponents of the *Historische Rechtsschule* from 'Germanic' or 'barbarian' (see below) codes of the successor kingdoms, they almost universally stopped short of taking-on the 'canonists', whom Brunner et al. cited extensively.[23] This might have had something to do with the fact that 'canons' had an obvious corresponding institution, the church council, which prevented them being written-off as purely 'ideological'; or perhaps it was because the content of canonical legislation, with its high incidence of repetition and centuries-long trajectory of evolution, often seemed too divorced from immediate social reality to warrant the same level of criticism as 'secular' legislation.[24] At any rate, 'canons' have not yet been included in the critical reappraisal of 'law' in the context of fifth- and sixth-century Gaul.[25]

Fouracre, eds., *The Languages of Gift in the Early Middle Ages* (Cambridge, 2010). Davies and Fouracre's introduction to *Settlement of Disputes* sets out their historiographical project. For wider context, see I. Wood, 'The Transformation of Late Antiquity 1971 - 2015, *Networks and Neighbours Journal* (https://nnthejournal.wordpress.com ; accessed 27th November 2017); also, A. Rio, *Legal Practice and the Written Word in the Early Middle Ages. Frankish Formulae, c. 500 - 1000* (Cambridge, 2009), introduction, 198-206; for a summary of responses to Wormald from those concerned with Anglo-Saxon law, see L. Roach, 'Law codes and legal norms in later Anglo-Saxon England', *Historical Research*, no. 86, 2013, 465-486.

[23] Wormald, *English Law*, 'introduction' complements Davies and Fouracre's introduction to *Settlement of Disputes* in setting out their assault on the *Rechtsschule*. Notwithstanding divisions between the so-called *Romanisten* and *Germanisten,* the above-mentioned German scholars cited and were cited by Brunner et al. e.g. (in Wormald's eyes the 'climax' of *historische Rechtsgeschichte*:) H. Brunner, *Deutsche Rechtsgeschichte* Bd. II. (Leipzig, 1894), 311 citing Loening, Hinschius, Hauck etc.

[24] D. Wagschal, *Law and Legality in the Greek East: The Byzantine Canonical Tradition, 381 - 883* (Oxford, 2014/Online, 2015), Introduction (esp.5) argues that Byzantine Law has been peremptorily dismissed (in Anglophone scholarship) for not conforming to modern expectations of how law should function.

[25] Whilst scholars such as Stefan Esders and Hermann Nehlsen developed much more nuanced understandings of the nature and historical value of law, they also have largely refrained from challenging the understanding of canon law in this context generated by Hefele, Loening, etc. S. Esders, *Römische Rechtstradition und merowingisches Königtum, Zum Rechtscharakter politischer Herrschaft in Burgund im 6. und 7. Jahrhundert* (Göttingen, 1997) and others

With regards to Roman imperial legislation, the works of scholars such as Jill Harries and Caroline Humfress have succeeded in directing at least historical study of Roman Law away from methodologies focussing narrowly upon imperial legislation per se, and towards approaches which take into account the historical conditions within which the legislation was sought, issued and applied.[26] They tend to tackle legislation as the product of dynamic, demand-led and heterogeneous interlocking systems, which accommodated a high degree of both official and unofficial legal pluralism and forum shopping.[27] The focus upon the institutional and social contexts in which 'law' was implemented

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cited below; H. Nehlsen, 'Entstehung des öffentlichen Strafrechts bei den germanischen Stämmen,' in *Freiburger Festkolloquium zum fünfundsiebzigsten Geburtstag von Hans Thieme,* hrsg. K. Kroeschell (1983), 3 - 16. Although, for the East such reappraisals are well underway, e.g. D. Wagschal, *Law and Legality in the Greek East: The Byzantine Canonical Tradition, 381 - 883* (Oxford, 2014 print/2015 online).

[26] J. Harries, *Law and Empire in Late Antiquity*, (Cambridge, 1999); ibid. 'Resolving Disputes: The Frontiers of Law in Late Antiquity', in R. E. Mathisen (ed.), *Law, Society and Authority in Late Antiquity* (Oxford, 2001), 68–82. C. Humfress, *Orthodoxy and the Courts in Late Antiquity*, (Oxford, 2007); 'Bishops and Law Courts in Late Antiquity: How (Not) to Make Sense of the Legal Evidence', *Journal of Early Christian Studies*, vol. 19, No. 3 (Fall 2011), 375 - 400; "Thinking through Legal Pluralism: 'Forum shopping' in the Later Roman Empire" in Duindam, J., Harries, J., Humfress, C. and Hurvitz, N., *Law and Empire* (Leiden: Brill, 2013), 225 - 251; 'A New Legal Cosmos: Late Roman Lawyers and the Early Medieval Church', in P. Linehan and J. Nelson eds., *The Medieval World* (London and New York, 2013), 557 – 575; 'Telling Stories About (Roman) Law', in P. Dresch and J. Scheele eds. *Legalism: Rules and Categories* (Oxford scholarship online, 2015), 79 - 104. Also, T. Honoré, *Law in the Crisis of Empire 379 - 455 AD: the Theodosian Dynasty and its Quaestors*, (Oxford, 1998). Now also, Lenski, N. E. Lenski, 'Evidence for the Audientia episcopalis in the New Letters of Augustine', in R. W. Mathisen Ed. *Law, Society, and Authority in Late Antiquity* (Oxford, 2001), 11-33; ibid., 'Imperial Legislation and the Donatist Controversy: From Constantine to Honorius', in R. Miles ed. *The Donatist Schism, Controversy and Contexts*, (Liverpool, 2016), 166 - 220.

[27] See introduction to Chapter One for further discussion. Of Humfress' publications, see in particular *Orthodoxy and the Courts in Late Antiquity*, (Oxford, 2007); "Thinking through Legal Pluralism: 'Forum shopping' in the Later Roman Empire" in Duindam, J., Harries, J., Humfress, C. and Hurvitz, N., *Law and Empire* (Leiden: Brill, 2013), 225 – 251. Recently, K. Ubl, *Inzestverbot und Gesetzgebung: Die Konstruktion eines Verbrechens (300 - 1100)* (New York, 2008) 28 onwards pays much greater heed to the social context of law (also Esders as cited throughout). Both were influenced by Luhmann as well as Anglophone critiques of the *Rechtsschule*.

complemented the approaches of Claudia Rapp, Peter Brown and others, which emphasized the 'charismatic' foundation of episcopal authority, rather than approaching it as derived from imperial legislation and the 'public' power of the State.[28]

Of particular importance to this dissertation, these works have had the effect of undermining a previous historical consensus that perceived a relatively firm dividing line between 'imperial' and 'ecclesiastical' legislation and legal systems within the Roman Empire.[29] For example, Humfress has argued convincingly that specific legal privileges which had accrued to clerics and churches, such as the right to be judged by their ordained peers in certain types of disputes ('*privilegium fori*') or the ability of a bishop to mediate between parties under certain circumstances, ('*audientia episcopalis'*), which together had been interpreted as evidence almost of an ecclesiastical 'state-within-a-state', can no longer be sustained and must now be seen as limited remissions granted on a case-by-case basis.[30] The implications of these conclusions

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[28] P. Brown, *Poverty and Leadership in the Later Roman Empire* (Hanover, New Hampshire, 2002); C. Rapp, *Holy Bishops in Late Antiquity. The Nature of Christian Leadership in an Age of Transition* (Berkeley, 2005); also K. Bowes, *Private Worship, Public Values, and Religious Change in Late Antiquity* (Cambridge, 2008) and K. Sessa, *The Formation of Papal Authority in Late Antique Italy: Roman Bishops and the Domestic Sphere* (Cambridge, 2012) both approach ecclesiastical 'authority' via 'domestic' models. On the contrast between this and Germanophone approaches to episcopal authority, see S. Diefenbach, '"Bischofsherrschaft" Zur Transformation der politischen Kultur im spätantiken und frühmittelalterlichen Gallien', in S. Diefenbach and G. Müller (eds.) *Gallien in Spätantike und Frühmittelalter, Kulturgeschichte einer Region* (Berlin/Boston, 2013), 91 - 150.

[29] For example, it was notable in approaches of Gaudemet and Herrmann: J. Gaudemet, *L'Église dans l'Empire romain* (IV - Ve siècles), 2nd ed. (Paris, 1989), 230-50; E. Herrmann, *Ecclesia in Re Publica. Die Entwicklung der Kirche von pseudostaalicher zu staatlich inkorporierter Existenz* (Frankfurt/Bern, 1980), 207-31. Noted by Humfress, *Orthodoxy*, 150f.

[30] See esp. Humfress, "Thinking through Legal Pluralism: 'Forum shopping' in the Later Roman Empire" in Duindam, J., Harries, J., Humfress, C. and Hurvitz, N., *Law and Empire* (Leiden: Brill, 2013), 225 – 251; Jones, *LRE*, 484-94; Herrmann, *Ecclesia* 331-34. Also on the *audientia episcopalis,* see J. C. Lamoreaux, 'Episcopal Courts in Late Antiquity', *Journal of Early Christian Studies*, Vol. 3, No. 2 (John Hopkins University Press, Summer 1995), 143 – 167; Harries, *Law*, 191-211.

for ‘canon law’ and how it was effected by the ending of the ‘imperial legal system’ form a central component of this dissertation. In light of this more nuanced understanding of how ‘Roman Law’ functioned, we cannot assume that the continued circulation of imperial legislation in post-imperial Gaul was sufficient to sustain the myriad interdependencies between ‘canon law’ and ‘imperial law’, as they had come to exist in the Late Empire. In order to understand how or why canonical legislation ‘changed’ in post-imperial Gaul we need to consider how it actually functioned in addition to mapping changes in the legislation’s content and form.

At this point, it is worth briefly sketching out the nature of the ‘changes’ in canonical legislation that this dissertation seeks to address. In one sense, they could crudely be summarised as an expansion of the focus of canonical regulations ‘outwards’. Whereas canons c. 400 generally regulated ‘religious professionals’, that is ordained clerics and members of monastic communities, canons in Gaul c. 600 addressed society as a whole. (Although as Chapter One will explore, this distinction is complicated by the earliest components canon law from the start of the fourth century, which did take an holistic view of the Christian community).[31] Furthermore, the perceived ‘authority’ of canonical rules

[31] W. Ullmann, ‘Public Welfare and Social Legislation in the Early Medieval Councils’, in G. Cuming and D. Baker (eds.) *Studies in Church History, 7, Councils and Assemblies*, *Papers Read at the Eighth Summer Meeting and Ninth Winter Meeting of the Ecclesiastical History Society* (Cambridge, 1971), 1 – 39 identified that the early medieval successor kingdoms, and Visigothic Spain and Merovingian Gaul in particular, saw ‘corporate’ networks of bishops produce a new form of legislation by which they intended to ‘build’ a Christian society, and that this was conducted ‘under the appellation of legislatively enacted charity’. (p. 5). Ullmann built upon Loening’s works, which identified both the emergence of legislation for public welfare (vol. II), and contained scattered references to the change in function of canon law in Gaul. However, Loening’s work was comprised of two volumes, the first surveying ‘canon law’ as it existed under the Roman empire and successor kingdoms, the second surveyed canon law as it had existed within the Frankish kingdoms. Perhaps partly because of this bipartite structure (perhaps also because both of Leoning’s volumes were at heart typological surveys) the significance of this shift in function was dissipated.

changed within this period: whereas across the Western Empire c. 400 canons were not seen necessarily, or even usually, as binding, mandatory norms, but rather as voluntary standards of behaviour to which members of the minority Christian congregations should subscribe, towards the end of the sixth century in Gaul local groups of bishops were prepared routinely to emphasise canons as 'hard' rules, which had to be observed and respected by everyone (even if this did not occur in practice).[32]

Just as important was a broader shift in the 'systemic' importance of canonical regulations to the Gallic society as a whole. In the final decades of the sixth century '*canones'* were acknowledged and promoted by Merovingian rulers (and bishops) as a normative system of fundamental importance to the safety and security of the realm.[33] King Guntram's Edict, issued at the church council of Macon 585, marked out an ambitious ideological role for canonical legislation.[34] In it, he described canons as a fundamental component of the kingdom's laws. The rationale for the council was nothing less than the preservation of justice and the governance of the people:

> *Per hoc supernae maiestatis auctorem, cuius universa reguntur imperio, placari credimus, si in populo nostro iustitiae iura servamus: et ille pius pater et dominus, qui humanae fragilitatis substantiam suo semper adiuvare consuevit auxilio, melius dignabitur cunctorum necessitatibus quae sunt opportuna concedere, quos cognoscit praeceptorum suorum monita custodire.*[35]

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[32] Chapter Five.

[33] An existing line of enquiry from which this dissertation draws (Chapter One) traces the emergence of an ideology of the *auctoritas* of disciplinary canons: H. Hess, *The Early Development of Canon Law and the Council of Serdica* 2nd Ed. (Oxford, 2002);

[34] *Guntchramni regis Edictum*, ed. A Boretius, *Capitularia regum Francorum*, MGH LL Capitularia (1896), I, 11f. See, Esders, *Rechtstradition*, 32.

[35] *Guntchramni regis edictum*, MGH LL 2.1 ed. Boretius (Hannover, 1883), 11; English translation, J.N. Hillgarth, *Christianity and Paganism 350 – 750: the conversion of Western Europe*, (Philadelphia, 1986), 96.

Guntram went on to equate canons with laws and saw them performing distinct yet complimentary functions in the preservation of the moral order:

> *Dum pro regni ergo nostri stabilitate et salvatione regionis vel populi sollicitudine pervigili attentius pertractaremus, cognovimus infra regni nostri spatia universa scelera, quae canonibus et legibus pro divino timore puniri consuerunt, suadente adversario boni operis perpetrari, et ex hoc procul dubio indignatione coelesti per diversas seculi tempestates homines ac pecora aut morbo consumi censentur aut gladio, dum divina iudicia non timentur; atque ita fit, ut admittendo illicita per ignorantiam multi depereant, et non solum praesentem vitam celerius cogantur amittere sed et inferni supplicia sustinere.*[36]

Guntram commanded his bishops, '[*populum*] *frequenti praedicatione studeatis corrigere et pastorali studio gubernare, quatenus*,...'. Men were to be 'corrected' by 'constant preaching'. Furthermore, *'...quicunque sacerdotum aut saecularium intentione mortifera perdurantes crebrius admoniti emendare neglexerint, iuxta quod conditiones causarum aut excessus personarum exegerint, alios canonica severitas corrigat, alios legalis poena percellat.'*[37] The canons and the laws worked together in 'correcting' and 'punishing' *both* clergy and laity. He went on: '*Convenit ergo, ut, iustitiae et aequitatis in omnibus vigore servato, distringat legalis ultio iudicium quos non corrigit canonica praedicatio sacerdotum*.'[38]

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[36] MGH LL 2.1, 11.
[37] Ibid., 12.
[38] Ibid. It is worth pointing out here, that this exposition on the role of canons echoed, but was substantively different from, earlier legislation from the Eastern Empire, which had placed greater emphasis upon the importance of canons but still largely

As this dissertation will argue, this coercive role was not one which had been associated with ecclesiastical canons previously.[39] Furthermore, in fifth- and sixth-century Gaul, the 'function' of canonical legislation essentially expanded to the point where it became a primary medium through which fundamental parameters of 'the legal system' in Gaul were defined and regulated. As will be addressed in chapters Three and Five, this shift in function accompanied a string of practical adjustments to the legal privileges and functions held by bishops and their *ecclesiae* (the generic term used henceforth to refer to 'churches', whether directly under the control of the bishop or not; see below on *parochiae*, *tituli, oratoriae* etc.), which amounted to a substantive transformation of legal culture in Gaul.

While early surveys of canon law documented the qualitative change in canonical legislation between c.400 and c.600,[40] the change was underplayed in later twentieth-century scholarship. This was true particularly of works whose chronological focus was limited to the post-imperial kingdoms. Pontal's *Die Synoden im Merowingerreich* and De Clercq's, *La législation religieuse de Clovis à Charlemagne*, for example, both underplayed the extent of change in the content of sixth century legislation, perhaps partly as a result of their chronological parameters.[41]

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portrayed them as 'internal' disciplinary standards for canons or abstract tenets of belief. Justinian's *Novel* 131 (543) which gave the 'force of law' to the 'ecumenical' councils, i.e. Nicaea, Constantinople, Ephesus I and Chalcedon –councils which Chapter One will discuss but primarily defined doctrine and points of ecclesiastical organisation. (Humfress, *Orthodoxy*, 197f.); Humfress also highlights Novel 6.1 to the Patriarch of Constantinople (573), which also referred to canons as standards for the clergy. (ibid.). Unfortunately, I am short of space and have had to exclude a comparison.

[39] Although it would go on to form an integral part of the Carolingian and subsequently Anglo-Saxon models of royal-episcopal government. Cubitt, *Councils*, 170–72 on the reception of Carolingian canons at the Legatine councils of 786.

[40] For example, Hinschius, *Kirchenrecht* IV's structure subdividing legislative topics into chronological periods highlights change over time clearly.

[41] So notes Ubl, *Inzestverbot*, 166, n.234; de Clercq, *législation*; O. Pontal, *Synoden*.

The early foundational works which traced the changing content of canonical legislation *and* sought to identify causal links with social and political conditions in the West c.400-600 pre-dated a number of historiographical revolutions, and, consequently, often framed their analyses with deeply problematic paradigms. Some attributed change in ecclesiastical legislation to contact with innate 'Germanic' social structures,[42] or explained changes in the late-sixth and seventh-century legislation as indicative of the collapse of public authority and the commencement of feudalism. [43] Previously influential concepts for explaining the changing content of canonical legislation, such as the formation of separate 'national churches' or *Landeskirchen*, prevail even in late twentieth-century studies of the successor kingdoms,[44] and, whilst they arguably still retain some value, have yet to be updated in light of recent work highlighting instances of inter-regional cultural exchange and mutual institutional development.[45]

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[42] E.g. Hauck, *Kirchengeschichte*, II, 90 onwards, built his narrative around the transformative effect of incoming Germanic tribes (although this did not stop him making astute observations about the appropriation of Roman/Christian cultural tropes, which later became the focus for Patrick Wormald and Ian Wood etc.'s analyses.

[43] For an introduction see A.C. Murray, 'Merovingian Immunity Revisited', *History Compass* 8 (2010), 913 - 28.

[44] The concept was originally pioneered by late-nineteenth and early-twentieth-century German ecclesiastical in conversation with the proponents of the *historische Rechtsschule* more famous for their work on 'Germanic' law (see below). Of the former, see Loening, *Geschichte*; Hinschius, *Kirchenrecht*; A. Hauck, *Kirchengeschichte*; Of the latter, see especially, H. Brunner, *Deutsche Rechtsgeschichte, 2nd ed.* (Munich, 1906–28). Later twentieth-century works still used the paradigm. E.g. K. Schäferdiek, *Die Kirche in den Reichen der Westgoten und Suewen bis zur Errichtung der westgotischen katholischen Staatskirche*, (Berlin, 1967); also E. Ewig, *Die Merowinger und das Frankenreich*, (Stuttgart, 1988; 5th edition 2006).

[45] E.g. Gregory Halfond has highlighted some of the shortcomings of the *Landeskirche*/*Reichskirche* paradigm (e.g. 'anachronistic' at 158), without discarding it entirely.(Halfond, *Archaeology*, 21f. and 158). On cultural exchange pertaining to the Church, Wood 'The Burgundians and Byzantium', and Esders '"Avenger of All Perjury" in Constantinople, Ravenna and Metz: Saint Polyeuchtus, Sigibert I, and the Division of Charibert's Kingdom in 568', both in A. Fischer and I. Wood eds. Western Perspectives on the Mediterranean. Cultural Transfer in Late Antiquity and the Early Middle Ages, 400 - 800 AD (London, 2014).

More recent works seeking to narrate and explain the development of canon law, such as those of Hess, tend to attribute the cause for change to evolving ecclesiology.[46] That said, recent decades have seen studies addressing individual legislative subjects, which do seek to explain legislative developments in light of contemporary scholarship; for example, on 'incest' see Karl Ubl's, *Inzestverbot und Gesetzgebung*.[47]

Other works have noted the change in canonical legislation towards the end of the sixth century in Gaul, but sought to explain it in political, cultural or economic terms. For example, Ian Wood has recently characterized the changing form of legislation in the Merovingian kingdoms as part of a cultural transformation of Frankish kingship as the Merovingians extended their grip upon the 'Romanized' southern regions of Gaul.[48] Likewise, Stefan Esders saw the imperial-style legislation of Chlothar II as symptomatic of Frankish rulers seeking to consolidate their

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A. Angenendt, 'Kirche als Träger der Kontinuität', in *Vorträge und Forschungen: Von der Spätantike zum frühen Mittelalter: Kontinuitäten und Brüche, Konzeptionen und Befunde*, Vol. 79 (2009), 101 – 141, at 124 a recent *Forschungsstand*, has no problem following Barion to perceive the definitive transformation of conciliar activity under successor kings with the rise of the '*Reichskonzilien'*, a related concept.
Although, N.B. more recently, the terms *Reichskirche* and *Landeskirche*, and thereby perhaps also their implications for the nature and role of law in sixth century Gaul, have been quietly dropped from 'mainstream' histories of the Merovingian kingdoms: Scholz does not mention the term, nor does he cite the works of Hinschius, Loening or Barion. He opts instead to bypass entirely questions over the 'formal' relationship between royal and ecclesiastical law by conceding that the two were inextricably linked and leaving it at that (S. Scholz, *Die Merowinger*, p. 107ff.); Ian Wood's *The Merovingian Kingdoms* takes a similar approach.

[46] Hess, *Development*, The slow growth of Christian communities drove the evolution of canonical norms (p.36), the emergence of comprehensive norms was underpinned by the crystallization of episcopal office and an increasingly sophisticated ecclesiology (p.37), the legalisation of Christianity and subsequent integration with the Empire was a 'stimulating' factor (p.38); while the definitive shift from canonical regulation to law, in Hess' eyes, was underpinned by the strengthening ecclesiastical structures of the fifth century (p.85). Hess also does not look at post-imperial Gallic canon law.

[47] Ubl, *Inzestverbot*.

[48] I. Wood, 'The governing class of the Gibichung and early Merovingian kingdoms', in W. Pohl and V. Wieser eds., *Der frühmittelalterliche Staat - Europäische Perspektiven* (Vienna, 2009), 11 – 22.

authority in Burgundy, a region with stronger Roman legal traditions.[49] Both Esders and Wood have highlighted the increasingly authoritarian ecclesiastical legislation in sixth-century Gaul as indicative of a 'radicalization' of clerical attitudes, as a response to ongoing civil war and plague. Meanwhile, Jairus Banaji, responding to Chris Wickham, portrayed shifts in the content of legislation as indicative of a transformation of economic relations in Gaul.[50] This dissertation seeks to supplement such hypotheses by reintegrating them into a narrative focused upon the changing form and function of canon law per se, and thereby to assist in taking the latter out from under the '*Schatten großeren Themen*'.[51]

Paradoxically, the constituent components of 'canon law' have either received near continuous scholarly attention, or else undergone revivals in recent decades. Papal decretals have a vast and expanding literature.[52] Likewise, the study of canon-law compilations and the manuscript traditions which preserve them is an equally rich field and, with regards to Merovingian Gaul, particularly since Hubert Mordek's

[49] Esders, *Rechtstradition*.

[50] J. Banaji, 'Aristocracies, Peasantries and the Framing of the Early Middle Ages', in *Theory as History. Essays on Modes of Production and Exploitation* (Leiden/Boston, 2010), 215 - 251.

[51] Siems, 'Entwicklung', 245.

[52] D. Jasper & H. Fuhrmann, *Papal Letters in the Early Middle Ages* (Washington DC, 2001); Gaudemet, *Formation* 159-66; ibid. *L'Église* 225; G. Dunn, 'The Appeal of Apiarius to the Transmarine Church of Rome', *Journal of the Australian Early Medieval Association*, vol. 8 (2012), pp. 9 - 31; ibid. 'Episcopal Crisis Management in Late Antique Gaul: The Example of Exusperius of Toulouse', in Antichthon 48 (2014), 126 - 143; ibid, 'Flavius Constantius and Affairs in Gaul between 411 and 417*', *Journal of the Australian Early Medieval Association* 14 (2014), 1 - 21; ibid. '*Collectio Corbeiensis*, *Collectio Pithouensis*, *and the earliest collections of papal letters*', in B. Neil and P. Allen eds., *Collecting Early Christian Letters, From the Apostle Paul to Late Antiquity* (Cambridge, 2015), 175 - 205; ibid. 'Innocent I on Heretics and Schismatics as Shaping Christian Identity', in G. Dunn and W. Mayer eds. *Christians Shaping Identity from the Roman Empire to Byzantium. Studies Inspired by Pauline Allen* (Leiden, 2015), 266 - 293; ibid. 'Placuit apostolicae (Ep. 1) of Zosimus of Rome and the Ecclesiastical Reorganization of Gaul', in *Journal of Early Christian Studies* (2015), 559 — 581; ibid. 'Innocent I and the First Synod of Toledo', in G. Dunn (ed.), *The Bishop of Rome in Late Antiquity* (Farnham, 2015), 89 - 109.

identification of the *Collectio Vetus Gallica*.[53] Recently, scholars such as Mark Vessey and Ralph Mathisen have made efforts to reconnect compilation activity with their social and political contexts. [54] Furthermore, the 'legislative' church councils themselves have garnered yet more attention in recent years by scholars employing relatively varied methodologies. [55] Walter Brandmüller's *Konziliengeschichte* series (intended to supplant Henri LeClercq's expansion of Hefele's *Conziliengeschichte*) ushered in works addressing both the evolving conciliar theory and content of ecclesiastical councils.[56] Herman Sieben's, *Die Konzilsidee der Alten Kirche* traced evolving ideas on the nature and authority of church councils from early-fourth century thinkers, such as Athanasius of Alexandria, through to the Frankish rejection of Nicaea II (787).[57]

However, works such as Gregory Halfond's *Archaeology of Frankish Church Councils*, largely avoid addressing the legislation per se, or

[53] See, Maaßen, Turner, Le Fournier, Kéry as cited above. Also, H. Mordek. *Kirchenrecht und Reform im Frankenreich : die Collectio Vetus Gallica, die älteste systematische Kanonessammlung des fränkischen Gallien* (Berlin, 1975); Halfond, *Archaeology*, 161. For earlier stages of compilation, E. Schwarz, "Die Kanonessammlungen der alten Reichskirche', *Gesammelte Schriften* 4 (1936), 159–275.

[54] M. Vessey, 'The origins of the *Collectio Simondiana*: a new look at the evidence', in J. Harries and I. Wood (Eds.) *The Theodosian Code: studies in the imperial law of late antiquity*, (London, 1993), 178 – 199; e.g. R. Mathisen, 'Between Arles, Rome and Toledo: Gallic collections of canon law in Late Antiquity' from *Fronteras Religiosas entre Roma, Bizancio, Damasco y Toledo. El Nacimiento de Europa y del Islam* (Siglos V-VIII), edited by S. Montero (Madrid, 1999); ibid. 'Church Councils and Local Authority: The Development of Gallic Libri canonum during Late Antiquity', in C. Harrison, C. Humfress, and I. Sandwell (eds.), *Being Christian in Late Antiquity: A Festschrift for Gillian Clark* (Oxford, 2014), pp.175 - 194;

[55] M. Moore, *A Sacred Kingdom, Bishops and the Rise of Frankish Kingship, 300 - 850* (Washington, DC, 2011), ch.2 has a discursive commentary on the conciliar *acta*; Weckwerth, *Ablauf* an invaluable catalogue of all Western legislative councils; C. Cubitt, *Anglo-Saxon Church Councils c.650 – 850* (London, 1995), a comprehensive study of conciliar activity with engagement with the legislative tradition and broader socio-legal functions (replicated, to an extent, by Halfond).

[56] K. Hefele/H. LeClercq, *Histoire des conciles d'après les documents originaux* (Paris, 1907-52). On the latter project, see Pontal, *Synoden*.

[57] H. Sieben, *Die Konzilsidee der alten Kirche* (Paderborn, 1979).

contextualizing it as part of a broader 'legal system'.[58] This dissertation will draw substantially from these studies, particularly in Chapters Four and Five on the role of councils and canons in late-sixth-century Gaul.

This dissertation seeks to contextualize the legislation produced by Gallic church councils in the fifth and sixth centuries. One of its key aims is to mediate between the overconfident conclusions of twentieth-century Germanophone scholarship regarding the status and importance of 'law' and the Anglophone scepticism of legislation's 'practical' value, which prefers to see legislation instead as a form of consciousness raising or ideological projection carried out by successor kings seeking to appropriate the legitimacy of law-giving Roman Emperors or Old Testament kings.[59] It will argue that the disciplinary rules issued by episcopal councils were intended as practical legislative instruments and that convincing evidence exists not only that the rules were 'applied' but also that Gallic bishops became invested in the 'application' of their rules over time.

As such, this dissertation strays into debates surrounding the nature and extent of episcopal authority and power. The period in question was also that in which many have perceived the rise of *Bischofsherrschaft*, a term with no direct English equivalent, but which can be roughly translated as 'episcopal rulership'.[60] *Bischofsherrschaft* is a multi-faceted historiographical paradigm, which could be summarised crudely as the phenomenon of bishops taking up positions of leadership in their communities of greater prominence than those held under the

[58] Halfond never addresses fundamental legislative topics such as *privilegium fori* or the *audientia episcopalis*, since he sought to offset the exclusive focus of previous scholars upon legislation per se. N.B. Weckwerth, whilst not primarily an analytic work, does make some comparisons across these periods; however, his division of councils by region precludes comparisons between Gallic and ecumenical councils or interregional analysis.

[59] See Wormald, *Lex Scripta* (above); and recently, Brown, *Ransom* (below).

[60] On the lack of English translation, S. Diefenbach, '"Bischofsherrschaft" Zur Transformation der politischen Kultur im spätantiken und frühmittelalterlichen Gallien', in S. Diefenbach and G. Müller (eds.) *Gallien in Spätantike und Frühmittelalter, Kulturgeschichte einer Region* (Berlin/Boston, 2013), 91 – 150, at 93.

functioning imperial state.[61] It has been argued that, in reference to Merovingian Gaul, the term has sometimes carried anachronistic connotations derived from later developments in the Carolingian and Ottonian eras, contexts in which bishops literally ruled so-called 'episcopal republics' as quasi-autonomous sovereigns.[62] The term's most famous proponent, Martin Heinzelmann, originally used the term *Bischofsherrschaft* in his prosopographical study focussing on elites in southern Gaul between c.300 and c.600. He argued that as Gallo-Roman, senatorial-level elites turned to episcopal rather than imperial office in order to fulfil their political ambitions and retain their privileged status within Gallic society, certain families came to dominate episcopal office in southern Gaul and Roman 'elite values' were imported into the ideological foundations of episcopal office.[63] Subsequent proponents of the term (including Heinzelmann himself) focussed upon the transfer of 'public' powers of rulership, such as judicial functions and control of taxation, away from the state (both the imperial state and the successor kingdoms) and into the hands of bishops.[64] Debates raged on the extent

[61] For an overview of literature see, esp. Diefenbach, 'Bischofsherrschaft'; also, M. Heinzelmann's, 'Bischof und Herrschaft vom spätantiken Gallien bis zu den karolingischen Hausmeiern. Die institutionellen Grundlagen', in F. Prinz (ed.) *Herrschaft und Kirche: Beiträge zur Entstehung und Wirkungsweise episkopaler und monasticher Organizationsformen* (Stuttgart, 1988), 23 - 83.

[62] So argues Diefenbach, 'Bischofsherrschaft', 93f. with bibliography.

[63] M. Heinzelmann, *Bischofsherrschaft in Gallien: Zur Kontinuität römischer Führungsschichten vom 4. bis zum 7. Jahrhundert. Soziale, prosopographische und bildungsgeschichtliche Aspekte*, (München, 1976), 200ff. See also, R. Van Dam, *Leadership and Community in Late Antique Gaul,* The Transformation of the Classical Heritage 8 (Berkeley, 1985), 115-76; On senatorial bishops in Gaul, Mathisen, *Roman Aristocrats*, 89 – 104; On empire-wide demographic trends in episcopal office holders see, Rapp. *Bishops*, 183 – 192. In Gaul, the first bishops of senatorial rank appear from the last quarter of fourth century, e.g. Claudius Lupicinus, bishop of Vienne; he had been a *vir consularis* in 380s (Rapp, *Bishops*, 193); by the 490s we start to see distinguished men whose entire career had been conducted in the Church (Mathisen, *Roman Aristocrats*, 91-3). For the current *communis opinio,* see Scholz, *Die Merowinger*, 24ff.

[64] Heinzelmann himself subsequently sought to identify the institutional foundations of *Bischofsherrschaft* (M. Heinzelmann, 'Bischof und Herrschaft vom spätantiken Gallien bis zu den karolingischen Hausmeiern. Die institutionellen Grundlagen', in F. Prinz (ed.) *Herrschaft und Kirche: Beiträge zur Entstehung und Wirkungsweise episkopaler und monasticher Organizationsformen* (Stuttgart,

to which this process was driven by church or state,[65] and built upon existing 'constitutionalist' views of the relationship between successor kings, 'their' churches and ecclesiastical law-making implicit in the *Landeskirche* paradigm outlined above.[66] Some have also posited that certain bishops controlled military forces of some description and acted as regional powerbrokers, although this remains contentious.[67]

The 'institutional' focus of much scholarship on *Bischofsherrschaft* was subsequently tempered by the aforementioned Anglophone emphasis upon 'charismatic' episcopal authority and scepticism of 'law'.[68] More recent studies have tended to emphasise the genesis of new types of authority (sometimes in explicit rejection of *Verfassungsgeschichte*).[69]

1988), 23 - 83) in distinction to earlier works such as those of Prinz, who had continued his original prosopographical approach and whose work tended to emphasize the charismatic foundations of episcopal authority (F. Prinz, 'Die bischöfliche Stadtherrschaft im Frankenreich vom 5. bis 7. Jahrhundert' in *historische Zeitschrift* 217 (1973), 1 – 35; ibid. Prinz, Der fränkische Episkopat,). Heinzelmann argued that the Roman state conferred upon the Church the responsibility of looking after the poor in addition to rump legal and fiscal privileges. This allowed it to take on greater responsibilities as the imperial state faltered, until ultimately it became responsible for public administration and taxation in the sixth century. N.B. Esders, *Römische Rechtstradition*, 178 n.363, in discussion of *audientia episcopalis*, appears to subscribe to 'delegation of public powers' view of episcopal power. He cites Heinzelmann and Noethlichs among others, and at p. 286 endorses Heinzelmann, Prinz and Jussen.

[65] Diefenbach "Bischofsherrschaft", 13.

[66] Above, n. 45.

[67] Scholz, *Die Merowinger*, 24-25, n. 12; Brown, *Eye*, 506 opposes this conclusion with literature. Kaiser, Jussen et al. (above) were key proponents. S. Wood, *The Proprietary Church in the Medieval West*, (Oxford, 2006), 292, sees Merovingian bishops as '...often the only effective rulers and defenders of their cities... sharing secular authority with the counts.'

[68] As above; see also, Brown's rejection of key facets of *Bischofsherrschaft* in *Eye*, 494f.; I. Wood, 'Avitus of Vienne: Religion and Culture in the Auvergne and the Rhône Valley, 470 - 530' (Unpublished D.Phil thesis, Oxford, 1980), 135 was skeptical about Avitus' ability to enforce norms or stand up to kings; I. Wood, 'The Ecclesiastical Politics of Merovingian Clermont', in P. Wormald, D. Bullough and R. Collins eds., *Ideal and Reality in Frankish and Anglo-Saxon Society* (Oxford, 1983), 34-58, surveyed the evidence for *Bischofsherrschaft* in one province concluding that it was more of multi-faceted set of cultural ideals, which bishops struggled to live up to.

[69] Scholz, *Merowinger*, 25 n. 15; B. Jussen, 'Liturgy and legitimation, on How the Gallo-Romans ended the Roman empire', in B. Jussen (ed.), Ordering Medieval

Curiously, however, most of the existing literature on *Bischofsherrschaft* has tended not to address directly the novelty of *canones* being given rough parity with *leges* and thereby being used to shape society in an entirely new way.[70] Heinzelmann's early work almost made it sound as though new 'aristocratic bishops' continued to legislate through sheer force of habit once they had switched their energies from imperial to episcopal office.[71] At the other end of the spectrum, Peter Brown (following in the wake of Wormald et al.) has characterized the late-sixth century Merovingian legislation highlighted above (and in Chapter Five) as indicative of an emergent 'religious governmental mood', in which Merovingian kings, such as Childebert and Guntram, issued 'aspirational' laws by which they '...showed that they could act like Christian Roman emperors.'[72] This dissertation seeks to supplement such approaches by demonstrating that the legislative agenda of late-sixth century Merovingian kings sought to bolster a particular version of 'canon law', which developed in post-imperial Gaul over the preceding century and which was, in fact, the product of specific institutional (as well as social) conditions.

Fundamentally, my work is asking what was canon law in fifth- and sixth-century Gaul and why did it change? It aims to bridge the chronological divide between the Roman and post-imperial periods, a task which has not been undertaken with reference to the evolution of canonical legislation, since before consensuses on Early-Medieval

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Society (Philadelphia, 2000), 147 – 99; also Baumgart, *Bischofsherrschaft* 152f. and 177f..

[70] Y. Hen, 'The Church in Sixth Century Gaul', in A. C. Murray ed. *A Companion to Gregory of Tours* (Leiden, 2016), 232 – 255, 244 who draws heavily from Heinzelmann's work even goes so far as to say the 'concerns' of ecclesiastical legislation remained 'pretty much the same' throughout the late-Antique and Frankish period.

[71] Ubl, *Inzestverbot*, adopted this latent ruling-class knowledge of/inclination for law as a cause.

[72] P. Brown, *The Ransom of the Soul, Afterlife and Wealth in Early Western Christianity* (Cambridge, 2015), 144f. In fairness, Brown also makes room for Banaji's historical materialism and Esders' methodology influenced by legal sociology, in explaining these changes.

identity, law and culture were overturned in the latter part of the twentieth century. It aims to approach canonical 'legislation' in a way that takes into account its status as a 'projection' of authority by legislators, without ignoring the demand-driven nature of Late Antique legislative processes and the fact that 'canon law' was primarily legislation issued by and for a very real and well-attested institution: the episcopate in council.

Dissertation structure

Since an aim of this dissertation is to provide an alternative perspective on the transition from imperial to post-imperial canon law Gaul, it follows a diachronic structure. Chapter One lays out the 'imperial starting point'. The late 530s are taken as chronological break, since this was the point at which Gaul became a 'Frankish' sphere. Chapters Two and Five identify 'causal factors', which help explain why legislation and legal culture changed for the periods, 405/6 – 537, and, 537 – 614, respectively. By contrast, the central chapters, Three and Four, focus upon the canonical legislation and the legal culture itself.

Chapter one will examine the evolution of 'canon law' within the functioning Roman Empire. Canons started as the organic 'legislation' of individual, minority Christian communities, which aimed to moderate the behaviour of the community as a whole. However, as Christianity was incorporated into the legal and institutional structures of the imperial state, canons shifted to become focussed more narrowly upon the clergy and some limited points of lay involvement in religious ritual. Imperial legislation and the coercive power of the state effectively 'took over' key functions, such as moderating lay discipline and certain aspects of ecclesiastical organisation. This process was fundamentally 'demand-driven': bishops and Christian communities sought to co-opt imperial officials and legal privileges in order to pursue their own agendas. This

chapter will argue that 'canon law' as a dynamic system was therefore intimately connected with the institutional and legal structures of Empire and that we should look to consider how the 'removal' of these structures impacted the content and function of legislation at a provincial level.

Chapter Two will argue that the processes of imperial fragmentation at work in Gaul c.405/6 – c.530s contributed directly to the emergence of a vibrant ecclesiastical legislative culture at a local level. Inevitably, there is considerable chronological overlap between Chapters One and Two. However, Chapter Two focuses more narrowly on the impact and role of legislation in Gaul. In particular, it will argue that the repeated processes of imperial fragmentation followed by the reestablishment of nominal imperial control in southern Gaul strengthened the connection between bishops and secular officials. It will argue that in the field of 'ecclesiastical legislation' (i.e. both canonical legislation and imperial law pertaining to religion), local Gallic elites sought to replicate both the legislative and appellate functions provided by the imperial state long before they partnered with 'successor kings'. Nevertheless, the successor kingdoms created yet further institutional, political and social conditions which encouraged bishops to generate more legislation and to generate new types of legislation.

Chapter Three will focus upon the changing content and 'function' of canonical legislation in Gaul during the fifth-century political turmoil and first generation successor kingdoms. It will note the increased production of conciliar legislation and canon-law compilations on a local basis, whilst highlighting the ways in which bishops continued to circulate legislation between regions and retained a notion of law as 'pan-imperial'. This chapter will argue that once the legislative function was 'localized' from the ecumenical to the provincial council, bishops started to use their canons for a more diverse range of functions, most notably, to define greater aspects of lay religiosity and marriage. They also started

to ‘appropriate’ certain key functions previously carried out by imperial law, such as defining the clergy’s ‘legal’ privileges and regulating church property. Chapter Three will also argue that that as Gallic bishops took greater ownership of the production and application of canon law in disciplinary tribunals, the processes encouraged clerics to develop new ideas about the authority of- and necessity for ‘canon law’.

Chapter Four will look at how canon law continued to develop in the sixth century under Merovingian hegemony. It will argue that bishops issued increasingly invasive canons, imposing corporal punishment and real economic obligations upon the laity. The period of most intense conciliar activity saw concurrent expansion of episcopal legal privileges into a wide-ranging *patrocinium* over the lower social classes. Bishops became more sophisticated and ambitious in their conciliar legislation and in their compilation activity. The inherent strengths of the episcopal councils as inter-regional, post-imperial institutions led to conciliar canons being sought and used for a range of new ‘judicial’ and ‘transactional’ purposes, which in turn shifted the perception of ‘canon law’ as an authoritative normative genre. The chapter will finish with a detailed study of conciliar trials and an argument that a new, canonical ‘legal culture’ emerged in post-imperial Gaul, which stressed the inherent authority of conciliar legislation and encouraged the use of canons in a formal, legalistic manner.

Chapter Five will argue that the establishment of Merovingian hegemony over Gaul in the 530s set in place certain institutional conditions, which help to explain why canons became a fundamental counterpart to ‘law’. It will highlight the role played by ‘the episcopate’, as a corporate entity (both sitting in council and as a inter-regional, collegiate network) within the constantly shifting Merovingian *Teilreiche* or ‘divided realms’. It will aim to integrate scholarship highlighting ‘deep’ economic, legal-cultural and social changes, such as the expansion of

‘ecclesiastical’ property and the emergence of new legal cultures in Gaul, into an institutional explanation for ‘canon law’s’ transformation.

Chapter One: Canon Law in the Roman Empire

The aim of this chapter is to outline the key features of 'canon law' under the western Roman Empire. It aims to highlight how canon law 'operated' in practice, i.e. how and why the rules were generated and applied, and to demonstrate how ecclesiastical disciplinary norms were intertwined with both imperial law and political, social and legal infrastructure collectively constituting the imperial 'state'. The central contention of this chapter is that in order to assess what was 'new' about post-imperial Gallic canon law it is not sufficient merely to survey the changing content of laws pertaining to religion and the clergy; rather, the 'system' as a whole needs to be considered, including the constituencies of individuals and organizations which sought 'law', the legislative organs from which it was sought and the variety of individuals institutions which helped to 'enforce' it.

Recent scholarship has tended to emphasize, firstly, that imperial law was fundamentally 'demand driven' (new legislation was sought, and existing laws applied, by a variety of local agents including bishops, rather than the initiative resting with emperors) and, secondly, that the Roman law accommodated a high degree of diversity, consisting of heterogeneous types of informal arbitration.[73] These shifts in perspective have together weakened the divide between secular and religious legal spheres. However, the systemic analyses of canon law still most influential, such as those of Gaudemet, largely predate these historiographical shifts; they retain a much stronger notion of the divide between the religious/secular worlds.[74]

This chapter will briefly outline the evolution of a corpus of canonical legislation in order, firstly, to provide a frame of reference for the diverse components of 'canon law' under discussion in subsequent chapters. A stable 'common core' of canonical legislation only emerged relatively late in final

[73] Harries, *Law* , 4 acknowledged the 'tacit frontiers' of late Roman law. On the jurists' approach to arbitration see ibid., 176ff; Humfress, *Orthodoxy*; Ibid. 'Legal Pluralism'.
[74] Humfress, *Orthodoxy*, 150.

decades of the fifth century, i.e. shortly before the Western Empire started to fragment politically. Section 1.B will address the wider imperial 'legal system(s)', within which 'canon law' developed. It will argue that imperial legislation became ubiquitous for defining key areas of church organisation and religious life and that canonical legislation grew around the imperial and administrative structures. 1.C will survey how canonical regulations were 'used' in central, inter-regional and provincial contexts. It will argue that knowledge of canonical legislation was relatively tenuous in the West, and that provincial bishops often relied upon their connections with an 'imperial center' (most often Rome) in order to access canonical norms as a source of authority. It will also highlight the limits of 'canon law' as a normative system in the provincial context. This chapter does not aim to survey imperial canon law in a comprehensive sense, but rather to highlight key points of intersection and dependence with the underlying structures of the Roman Empire, in order for subsequent chapters to identify change in the fifth and sixth centuries.

1.A: The evolution of 'canon law'

By the fourth century, 'canons' had emerged as one of four potential sources of ecclesiastical norm; the other three being the Old and New Testaments, apostolic tradition (both real and apocryphal), and local custom.[75] The earliest disciplinary 'canons' were largely hortative and focused upon the congregation.[76] The generation of canonical legislation was driven by the

[75] K. Pennington, 'The Growth of Church Law', ch. 16 in A. Casiday and F. Norris eds., *The Cambridge History of Christianity, vol. II Constantine to c.600* (Online publication, 2008), 386 – 402, 387: fundamental principles for ecclesiastical organization were originally contained in the 'pastoral epistles', 1 Timothy and Titus. Pennington, 'Growth', 394 on 'handbooks' for the clergy composed in these early centuries, such as the *Didache, Traditio Apostolica* and later the *Apostolic Constitutions* containing the *Canons of the Apostles* and the *Didascalia Apostolorum* (early fourth century), covered subjects such as the liturgy, fasting, administration of the sacraments, and clerical ordinations. C.H. Turner, 'Notes on the Apostolic Constitutions : The Apostolic Canons', *JTS* 16 (1915), 523–38; Hess, *Development*, 36f.; Humfress, *Orthodoxy*, 154.

[76] Hess, *Development*, 35.

Church's institutional development.[77] Over the course of the third and fourth centuries, diocesan administrative organization began to solidify, and the practice of holding councils in order to deliberate over doctrinal matters and to settle clerical disputes became more common.[78]

Around the mid-fourth century, a stable corpus of conciliar canons local to Asia Minor had come into being. It included the councils of Ancyra (314), Neocaesaria (314/19) and perhaps Gangra (c.340/355);[79] and later also Antioch (328/341) and Laodicea (pre-380).[80] By 381, this so-called Antiochian Corpus had been united with the Council of Nicaea (325), which was interpolated at the head of the otherwise chronological order. Within a century this corpus (Wagschal reasonably terms it the 'the Nicene Corpus'; adopted hereafter) became the 'undisputed core of virtually the entire imperial church'.[81] However, this summary of the developing textual tradition suggests a degree of uniformity at odds with the reality of 'canon law' as perceived by contemporaries, particularly those in the West. It was at this point also that the 'style' of canonical 'legislation' became more self-consciously authoritative.[82]

In order to ascertain what 'canon law' looked like for contemporaries in any given context, it is necessary to factor-in the contents of the nearest canon-law collections (i.e. geographically and chronologically nearest).[83] Only a minority of fourth-century councils, which generated legislation later

[77] Pennington, 'Growth', 388; Hess, *Development* and Stephens *Canon Law* also adopt this as the impetus driving the evolution of canon law.
[78] Hess, *Development*, 35.
[79] T. D. Barnes, 'The Date of the Council of Gangra', *JTS* n. 40 (1989), puts Gangra c. 335.
[80] Schwarz, 'Kanonessammlungen', 159–275.
[81] Wagschal, *Law*, 34.
[82] Hess, *Development*, p. 85, on the emergence of the '*statutum'* style in conciliar legislation.
[83] For an introduction and overview of the compilations potentially available at each stage:
Hess, *Development*, esp.53 – 9; Wagschal, *Law*, ch.1. With a perspective on the West: Mordek, Kirchenrecht, ch.1 keeps a tight focus on what clerics might have known in the latter stages; Maaßen, *Geschichte*, 8-149 is foundational. Cf. J. Gaudemet, 'Collections canoniques et codifications', *Revue de droit canonique* 33 (1983), 81 – 109; ibid. *Les Sources du Droit de l'Église en Occident du IIe au VIIe Siècle*, (Paris, 1985).

considered authoritative, were held in the West, the majority of early councils, and indeed compilations, originated in the East.[84] The majority of attendees at Nicaea 325 are thought to have been Eastern bishops.[85] And after the final administrative division of the Empire into East and West in 395, 'ecumenical' councils were held under the supervision of Eastern emperors alone; although the *sacra*, or letters of invitation continued to bear the names of their Western colleagues.[86]

In light of this starting point, it is not insignificant that the first identifiable compilations of canon law in the West cannot be traced back before the late fourth century for North Africa, and Italy.[87] Compilation activity for Gaul has been traced back to the mid-fifth century. (See chapter on fifth-century Gaul).[88] Several early canon law collections linked to Gaul contain primarily Gallic conciliar canons.[89] This could indicate the existence of a local tradition of simply retaining local councils in the western provincial regions in the fourth and early fifth century.

The Nicene Corpus started to appear in the West from the early-fifth century onwards, in the so-called Isidorian translation, which is thought to represent the first Latin translation of this Eastern canonical corpus;[90] secondly,

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[84] Hess, *Development*, 40-45; On the origins of Western compilations, see Kéry, *Collections*, introduction.

[85] Price & Gaddis, *Chalcedon*, 4; L'Huillier 1995, 18f.; on limited western attendance see Loening, I, 507.

[86] Price & Gaddis, Chalcedon, 4; Gaudemet, *L'Église*, 456-63 emperor convenes ecumenical councils necessarily because no-one else can gather bishops from across empire. He could also enforce decisions with law.

[87] Hess, *Development*, 55. On African compilations see Maaßen, *Geschichte*, 149-85; F. Cross, 'History and Fiction in the African Canons', *Journal of Theological Studies*, 12 (October 1961), pp. 227-247, at 234-36 and below. Scheibelreiter, 'Church, 696 in Italy the *Vetus Romana* (c.350-410) contained the canons of Nicaea and Serdica. On *Isidoriana* Gaudemet, *Sources*, 77f. On compilation generally, Humfress, *Orthodoxy*, 206.

[88] See below and Turner, 'Arles'.

[89] E.g. *Collectio 'concilii secundi Arelatensis*', compiled in Gaul 442 – 506, contains Gallic conciliar canons (Kéry, *Collections*, p. 6; Mathisen, 'Second Council of Arles'); *Statuta ecclesiae antiqua* –southern Gaul, second half of fifth century; *Quesnelliana* – turn of the sixth century, from Italy or Gaul; contains conciliar canons and decretals (esp. Pope Leo I); *Hispana* (4th Council of Carthage. (Kéry, *Collections*).

[90] Hess, *Development*, 56 perhaps sent to Africa for the '*Causa Apiarii'* in 419; before 451 *Wagschal*, *Law*, 34.

with the *Prisca* at Rome (c.451 – 500);[91] thirdly, and definitively, with the *Dionysiana* at Rome c.500.[92] (There are also hints that all or part of it were circulating in southern Gaul by at least the second half of the fifth century).[93]

It is not clear (or even likely) that bishops 'on the ground' throughout most of the West would have had ready access to a unified body of canonical norms, which included fourth-century Eastern components (i.e. the 'Antiochene Corpus' and Canons of the Apostles) until roughly the mid-fifth century. This fact is often obscured in schematic surveys of canon law, such as those of Hinschius or more recently Limmer.[94] Crucially, these Eastern components held the most extensive 'outward-facing' regulations (i.e. regulations affecting the lives of the laity, as opposed to the ordained clerical elite). Even some relatively major fourth-century Eastern councils, such as Ephesus, are barely present in Western collections.[95]

From the final decades of the fourth century onwards, western bishops also turned to the bishop of Rome as a source of information about established church custom. He was regarded not so much as a legislator but rather as guarantor for the order or continuity of canon law.[96] Nevertheless, papal interpretations increasingly resembled the *rescripta* of emperors and indeed were also accompanied by an increasingly sophisticated and strident articulation of the primacy of the See of Rome.[97] These 'decretals' were also effectively a 'demand driven' form of law, in the sense that provincial bishops

[91] Ibid.; Maaßen, *Geschichte*, 30-33.
[92] Maaßen, *Geschichte*, 442-40; A. Fiery, *The Collectio Dionysiana* [http://ccl.rch.uky.edu/dionysiana-article] (Online 2008 accessed 4th January 2018); For a brief overview of Dionysius' use of older materials, see Cross, 'History', 234-36.
[93] See the next chapter on influences for the *Statuta Ecclesiae Antiqua*.
[94] Hinschius, *Kirchenrecht*; J. Limmer, *Konzilien und Synoden im spätantiken Gallien von 314 bis 696 nach Christi Geburt* (Frankfurt, 2004), Teil 1: Chronologische Darstellung und Teil 2" Zusammenschau wichtiger Themenkreise.
[95] L'Huillier 1996, p. 153.
[96] P. Landau, 'Kanonisches Recht und römische Form: Rechtsprinzipien im ältesten römischen Kirchenrecht', in *Der Staat* vol. 32 (1993), pp. 553 – 568; D. Hunt, 'The Church as a public institution', in A. Cameron and P. Garnsey eds. *The Cambridge Ancient History vol. 13: The Late Empire, AD 337 - 425,* (Cambridge, 1997 / Online, 2008) pp. 238 – 276, at 249; also Humfress, *Orthodoxy*, 212; Gaudemet, *Sources*, 58 – 60.
[97] Landau, 'Recht' traces this to Damasus in the 380s.

sought and retained them of their own volition, and that popes had no means (or even, perhaps, desire) to ensure their interpretations were 'enforced' on the ground. By the early fifth century, bishops in southern Gaul formed small private collections of papal decretals.[98] However, this activity was relatively small-scale. By the time Dionysius Exiguus came to compile his collection of papal decretals at the start of the sixth century in Rome, the extant corpus amounted to 38 texts plus one imperial decree.[99] This contrasts with the volume of conciliar legislation, the output of the imperial *quaestor* and popes of later centuries.[100]

Changes in content

The content of canonical legislation changed over the course of the fourth and fifth centuries as a result of the development of 'the Church' as an organisation and of its increasing interdependence upon imperial law. The earliest conciliar 'legislation' was that of the council of Elvira.[101] When the council met, Christianity was still subject to persecution. The canons reflect the status of Christianity as a minority (primarily urban) religious movement, balancing Christian teachings on sexuality with conventional Roman morality.[102]

[98] The literature on the transmission of papal decretals is vast. Jasper & Fuhrmann, *Letters*, is a good starting point; ch.5 below.
[99] Wurm, *Studien*, 61.
[100] Harries, *Law*, 22 puts it at c. 21 constitutions a year in terms of the extant laws and estimating a much higher output in total.
[101] Hess, *Development*, 41. Time of convocation has been placed before the last period of persecution between 295 and 302; post-persecution; and post Arles 314. See J. Evans Grubbs, *Law and Family in Late Antiquity, The Emperor Constantine's Marriage Legislation* (Oxford, 1995), 15.
[102] S. Laeuchli, *Sexuality and Power: The Emergence of Canon Law at the Synod of Elvira* (Philadelphia, 1972); on the pace and extent of Christianisation, see Evans Grubbs, *Law*, 8 estimated c.5% population of the Empire were Christian by reign of Constantine, these were largely urban, middle and lower classes and primarily located in the Eastern half of the Empire; Brown, *Eye* 36&81; A.H.M. Jones, 'The Social Background of the Struggle between Paganism and Christianity', in A. Momigliano ed. *The Conflict between Paganism and Christianity in the Fourth Century* (Oxford, 1963), 17 – 37; Rapp, *Bishops*, 172 – 88, 205 – 44; on the archaeological traces for Christianity in Gallic cities in the fifth century, Halsall *Migrations*, 347. Canons on sex and marriage at Elvira: 35/81 canons (although some have been attributed to later councils later in fourth

In the context of Christianity as small, urban cult, these prescriptions effectively defined the boundaries of the elect and their voluntary standards of piety, rather than forming non-negotiable, universal standards to which everyone in society was obliged to conform.[103]

Once Constantine embraced Christianity and initiated the tradition of state-backed, pan-imperial church councils, the legislative focus of councils shifted toward ecclesiastical organisation and clerical discipline.[104] At Nicaea and subsequent fourth century councils, the key aim was to establish a positive definition for 'orthodox' Christianity, primarily in terms of doctrine.[105] Canons addressed senior hierarchical structures of the church,[106] which remained

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century); 8/25 at Ancyra; 2/22 at Arles 314; 8/15 at Neocaesarea (Evans-Grubbs, *Law*, 73 – 75).

[103] Hess, *Development*, 40 – 2; a major concern was how to accommodate those who had temporarily lapsed or left the community: (Elvira cs. 1&2; Ancyra, cs. 1 – 6, 8 – 9; Nicaea cs. 8, 11 – 12, 14); Evans Grubbs, *Law*, 15ff, at 16 and 74 onwards for discussion of the contents of Elvira, Arles I, Ancyra and Neocaesaria.

[104] On the legislative change in gear after Constantine embraced Christianity. See recently C. Stephens, *Canon Law and Episcopal Authority: The Canons of Antioch and Serdica* (Oxford, 2015), who argues that the councils of Serdica and Antioch (which produced divergent answers to questions of doctrine and discipline/church hierarchy) essentially attempted to exceed the traditional function of canon law by taking on the task of legislating for a new church hierarchy.

[105] Constantine's invitation to the council specified only that they met 'for many reasons', R. Lim, *Public Disputation, Power and Social Order in Late Antiquity* (Berkeley, 1995), 184.

Traditional ecclesiastical histories tended to focus upon the formation of doctrine as the primary activity of fourth-century church councils: Stephens, *Canon Law*, 2 n. 3, who aims to reintegrate the surprisingly distinct study of contemporaneous theological and institutional developments within the church.

[106] Gaudemet, *L'Église*, 377-96; Jones, *LRE*, I, 80-86; recently, B. Daley, 'Position and Patronage in the Early Church: The Original Meaning of "Primacy of Honour"', *JTS* n. 44 (1993), pp. 529–53; Hunt, 'Church', 238 - 276. The question of whether / to what extent the ecclesiology outlined at Nicaea altered what had existed previously is vexed and beyond the primary focus of this dissertation: see P. L'Huillier, 'Ecclesiology in the Canons of the First Nicene Council', in St Vladimir's Theological Quarterly vol. 27 (1983), pp. 119 – 131 for discussion of the problem (from a Eastern Orthodox perspective). **Nicaea 325, cs. 4 – 6** 'envisage a structure for the church that parallels the provincial organisation of the Roman empire; **c. 5** Metropolitan bishops were to hold synods twice a year to decide matters of ecclesiastical discipline; –N.B. the first historical mention of metropolitan bishops (L'Huillier, 'Ecclesiology', 123); **c. 6** confirms the bishop of Alexandria's authority over the bishops of Egypt; **c. 7** bishop of Jerusalem to be honoured according to custom; **c.15 & 16** Bishops and clergy were required to remain in the churches where they were ordained; **c. 18** established the order of ranks

thereafter a major theme of the legislative church councils held under Roman imperial aegis: it was continued at Antioch 341,[107] Serdica 343,[108] Constantinople 381,[109] Chalcedon 451.[110]

The gradual accretion of this 'quasi-official' corpus must not obscure the fact that there were also localized legislative traditions, and some which made sophisticated efforts to 'legislate' for an institutional church hierarchy.[111] For example, in North Africa in the 390s the *Breviarium Hipponense*, an epitome of African 'institutional' norms, was the product of two councils four years apart, the second of which met with the specific intention to clarify and build upon the regulations drawn up at the first.[112] It has been described as 'a self-conscious

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amongst the clergy: bishops and priests were higher than deacons and this order could not be compromised especially during liturgical ceremonies such as the Eucharist.

[107] **Antioch 341, c. 3** Metropolitan bishops to proceed others in rank; **c. 9** and bear responsibility for the province; **cs. 12** and **14** are guidelines for appeals by bishops to greater synods, if they refuse to accept the decision of their local council. Stephens, *Canon Law* (Oxford, 2015); N.B. Book Eight of the Apostolic Constitutions, whose 'Apostolic Canons' were closely related to Antioch, was also concerned with 'the description and delineation of positions, offices and authority in the church.' (Wagschal, *Law*, 95).

[108] Hess, *Development*, 143, summarises the contents of **Serdica 343** according to theme: The translation of bishops and other clergy: Canons 1, 2, 3a, 14, 15, (20); the reception of excommunicate clergy: 16, (17); the solicitation of clergy from another diocese: 18, 19; refuge for bishops and clergy persecuted for their theology: 21; the filling of vacant sees: 5, 6; the proving of candidates for the episcopate: 13; the right of appeal: 3b and c, 4, 7, 17; episcopal journeys to the imperial court: 8, 9, 10, 11, 12; matters pertaining to the church of Thessalonica: 20, XVIII, XIX.

[109] **Constantinople 381**, **c. 2** Bishops will not interfere with churches outside their diocese; **c.3** Bishop of Constantinople has equal prerogatives and honour to Rome; **c.6** people who accuse bishops to be investigated properly although their religion will ought not prejudice their case in personal matters, in religious questions it is relevant, excommunicates cannot accuse a bishop, complaints on religion against bishops must go to the council of bishops of the diocese and not the emperor, civil courts or ecumenical council; **c.7** on various sorts of returning heretic.

[110] At Chalcedon, Nicaea 325, c. 6 – metropolitans had ultimate right to ordain local bishops – was altered (L'Huillier, *Church*, 126, n. 37).

[111] See for example, the *Concilium Iliberitanum*, an assortment of early fourth-century legislation from Hispania (Grenada), much of which overlapped with the output of councils such as Arles, Ancyra and Nicaea. H. Montgomery, 'Crime and Punishment in the Statutes of the Concilium Iliberitanum', *Studia Patristica* 24 (1993), 169-74.

[112] Maaßen, *Geschichte*, 149-85, 166; see also Weckwerth, *Ablauf*, 207, for an overview of the function of North African canons. Hippo 393, Carthage 397, Carthage 421 and *Codex Africanum*. (for these councils as they were preserved in Dionysius Exiguus' *Codex* Canonum, see Migne, P.L. lxvii, 181-230); 36(/37) canons covered the following topics: (1) status of the clergy; (2) requirements of ordination; (3) Points of clerical

attempt to create a system of authoritative, ecclesiastical, collective decision-making', and created a comprehensive constitution for the government and conduct of its ordained clergy.[113]

That such legislation developed in North Africa at that time was no doubt due in part to the fact that the region was densely covered with small dioceses, whose interaction with one another generated greater demand for organisational rules.[114] Furthermore, Geoffrey Dunn has argued that the North African Church's sense of itself as a church apart, distinct from the other *ecclesiae* '*trans mare*', led it to develop its own organizational and disciplinary canons without rejecting the authority of the Roman Church entirely.[115] Both of these conditions arose in 'post-imperial' Gaul, and the connections and interrelations between late-imperial North African canonical legislation and that of the post-imperial West deserve further study. We shall see below, however, that despite this 'wider' role played by provincial canons in North Africa, imperial law remained the dominant normative system for many day-to-day disciplinary or organisational questions faced by bishops *and* continued appeals to Rome and other imperial centres by African laity and clerics served to check the development of 'canons' into a truly fundamental normative system, as occurred in post-imperial Gaul.

In Gaul and Spain, local councils from the end of the fourth century onwards often attempted to clarify and develop local organizational structures.[116] However, the vast majority of fourth century Gallic councils dealt

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discipline including: That clerics may not confer their property on non-catholics; clerics may not enter public houses except when travelling; (4) rules for the administration of justice amongst clergy: how many clerics were required to try bishops, presbyters and deacons; penalties for clerics launching civil claims; bishops may not travel oversees except with permission of their primate; (5) liturgical matters; (6) definition of authoritative scripture.

[113] Humfress, *Orthodoxy*, 206f.

[114] On socio-topographical profile of North Africa see Bowes, *Private*, 162 – 169.

[115] G. Dunn, 'The Appeal of Apiarius to the Transmarine Church of Rome', *Journal of the Australian Early Medieval Association*, vol. 8 (2012), pp. 9 - 31.

[116] Turin 398 attempted to resolve the competing traditions for establishing the primacy of local bishops: one held that bishops were senior according to the date of their ordination, another emphasized the authority of metropolitan bishops holding

primarily with doctrinal issues.[117] Under the Empire, provincial councils generally stopped issuing extensive rules on a range of legislative subjects. This occurred partly because imperial legislation took over some of the job and partly because the councils' foci were geographically and thematically broader – there were more fundamental issues which first needed to be addressed (i.e. doctrine and ecclesiastical organisation).[118] For example, councils after Elvira stopped legislating on lay sexuality. After Neocaesaria (pre-325), which ruled against levirate marriages (i.e. that a woman was not to marry two brothers in succession); prescribed penance for bigamists; and prevented clerics attending the ceremony for people contracting a second marriage,[119] no new restrictive *canones* appear to have been issued on the subject until Orleans in 511 (see below).[120] A rare exception was the Eastern council of Laodicaea (364), whose first canon defended the ability of Christians to enter into a second marriage, provided they engaged in some prayers and fasting.[121] Canons from the late-

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sees at provincial capitals. Turin also regularized legal disputes between bishops. (Moore, Spirit of Gallican Councils, 23).

[117] **Agrippinae** 346; **Arles** 353; **Beziers** 356; **Paris** 360/1 all covered doctrinal issues; **Bordeaux** 384-5 and **Treves** 386 were primarily disciplinary councils in relation to the Priscillianist controversy (Munier, CCSL, 148, 32 - 34); **Valence** 374 was the first Gallic council to produce substantive disciplinary rules, which pertained to bigamists c.1, holy virgins c.2, the return of pagans c.3, deposition of criminal clerics c.4. (On Valence 374, see Munier, ibid., 37 - 45; Maaßen, *Geschichte*, 190f; Gaudemet, *Conciles*, 100 – 111). The next Gallic council to produce significant disciplinary canons was **Nimes** 394/396: c. 1, clerics who subscribe to incorrect beliefs; c. 2, no women are to be admitted to the clergy; c. 3, admission of condemned persons to communion; c. 4, no deposed cleric shall be received by another bishop; c. 5, re priests wandering; c. 6, priests who need to travel through necessity shall receive an *apostolia* from their bishop; c. 7 those who attempt to subvert bequests to churches, shall be excluded from communion and put with the catechumens. (See Munier, ibid., 49; Hefele II, p. 402). Subsequent fifth-century Gallic councils are treated in the next chapter.

[118] The abatement of canonical legislation on matters of private morality by ecumenical councils is acknowledged in passing Evans-Grubbs, *Law*, 74.

[119] Neocaesarea (ca. 314/315) c. 2, 3 and 7 (EOMIA 2,120).

[120] N.B. The only canons issued on marriage in the fourth-century councils of the Nicene Corpus affirmed the ability of (lay) people to enter into second marriages: The earlier councils of Ancyra, c. 10 (deacons who marry), c. 11 (betrothed girls who are abducted), and c.19 (dedicated virgins who break their vows); subsequently also, Nicaea 325, c. 8 mentions in passing those who have been married twice undergoing penance (in the context of prescribing penance for returning heretics); see Gaudemet, L'Église, 521-54.

[121] Laodicea c. 1 (Hefele vol. 2, 299).

fourth and fifth centuries on sex and marriage were predominantly concerned with regulating clerical relationships. Clerics were, on the whole, permitted to remain married but not to have sex.[122] They could not marry after ordination, and those who had married twice were not permitted to enter the clergy.[123] In contrast, from the reign of Constantine onwards, emperors issued extensive laws on various aspects of marriage.[124] A 355 law to the praetorian prefect of Rome, for example, barred men from marrying their deceased brother's wife.[125]

Likewise, the intricate details of lay religiosity ceased to be a regular topic for canonical legislators.[126] Antioch 341, c. 1, that those who disregarded Nicaea in their celebration of Easter were to be excommunicated, was explicit that it applied to the laity.[127] However, it was something of a rarity amongst the later fourth century councils. In contrast, from the 320s onwards a series of imperial laws regulated the observance of Easter and the Lord's day.[128] The last council to attempt to regulate lay attendance at Mass, the Council of Elvira, was also the last council in this period known to have been attended by the laity.[129] Once councils had definitely shifted to become intra-regional, clerical gatherings,

[122] Evans-Grubbs, *Law*, 132 – 133; Elvira, c. 36 enjoined bishops, presbyters and deacons to abstain from sex and procreation; although this canon may have been from later in the fourth century. Ancyra, c.10 marriage permitted for deacons not ordained priests. In the West, Carthage 397, c.18 readers must either marry or take vow of continence, c.24 against unmarried clergy or bishops visiting widows or virgins; Leo I tried (unsuccessfully) to push the prohibition to subdeacon (Ep. 14.4 (446); PL 54, 672); Chalcedon 452, c.14 readers and chanters must not marry heterodox women. Also, D. Hunter, *Marriage, Celibacy, and Heresy in Ancient Christianity: The Jovinianist Controversy* (Oxford, 2007); Gaudemet, L'Église, 156-63.

[123] Evans-Grubbs, *Law*, 134 onwards on the increasing emphasis on virtues of virginity (both amongst clergy and laity) from late fourth century onwards; Pope Siricius (384 – 99) is the first to make efforts to promote clerical celibacy (unsuccessfully) in the West.

[124] Ibid., Appendix 1, 343 – 49 laws on betrothal and divorce, violations of chastity (*raptus*), quasi-matrimonial unions (i.e. with slaves or concubines), child/parent relations, inheritance, gift-giving within families, rights of married women.

[125] CTh 3.12.2, (Pharr, 74).

[126] Hess, *Development*, 44.

[127] Hefele vol. II, 83.

[128] CTh 2.8.1 and 18 – 25, spanning years 321 – 412.

[129] Hess, *Development*, 40; Elvira ruled that anyone who failed to attend church three Sundays in a row was to be 'kept out' for a short period and the punishment was to be public. NB Laodicea, c.29 No-one to 'Judaize' and be idle on a Saturday; Sunday ought to be observed if possible –was more an attempt to clearly demarcate Christian from Jewish religiosity than an attempt to issue authoritarian legislation for the *populus*.

preoccupied with doctrine and ecclesiastical hierarchy, and were no longer local meetings conducted by and for the entire congregation, they by-and-large stopped recording norms for lay life where it did not intersect directly with religious cult, such as the celebration of major festivals, the liturgy. Even these areas were treated more as points of order.[130]

Perhaps because canons focused more narrowly upon the clergy, there was also no explicit obligation articulated for the laity to know them.[131] Even with regards to clerics, it was not until the 380s that councils and bishops started to express a belief that professional ecclesiastics ought to know the canons;[132] a fact that chimes with the apparently uneven distribution of 'canon law' even in the first half of the fifth century. If the earliest components of the Nicene Corpus were generated in small, mixed ecclesiastical-lay settings, this might explain why there was no formal requirement for everyone to become familiar to the rules: knowledge of the behavioural standards might have been expected to diffuse naturally.[133]

Whilst the pastoral responsibilities of priests gave them an inherent interest in upholding certain standards of behaviour amongst the laity, the 'control mechanisms' available to clerics for compelling certain types of behaviour (beyond hortative sermons) were social and un-codified. Once an individual had undertaken the catechumens and received baptism (i.e. formally

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[130] H. Bruns, *Canones Apostolorum et Conciliorum Veterum Selecti, Saeculorum IV. V. VI. VII.* (Berlin, 1839), ch. 1. On Elvira as the sole antecedent prior to Agde 506, c. 47 (discussed below) see Hinschius, *Kirchenrecht*, IV, 288. On the gradual loss of a lay voice in church councils, see R. Lim, *Public Disputation, Power and Social Order in Late Antiquity* (Berkeley, 1995), 215 onwards: public disputation was effectively marginalized between Ephesus 431 and Chalcedon 451 and replaced with written evidence, episcopal *sententiae*.

[131] Section 1.C below.

[132] Mordek, *Kirchenrecht*, 1 n. 1 & 2, cites *'...statuta sedis apostolica canonum venerabilis definita nulli sacerdotum Domini ignorare sit liberum*' (Pope Siricius; JK 255; Migne, PL 13, p. 1146); '*ignorare numquam licuerit sacerdotum, quod canonum fuerit regulis definitum*' (Pope Leo I; JK 402; Migne, PL 54, p. 613); '*item placuit, ut ordinandis episcopis vel clericis prius ab ordinatoribus suis decreta conciliorum auribus eorum inculcentur...*' (Carthage 3 according to the *Hispana* c.3; Migne, PL 84, p. 189). Also, *'Nulli sacerdotum suos licet canones ignorare...*' (Pope Celestine I; JK 371; Migne, PL 50, p. 436).

[133] van Dam, *Leadership*, ch. 2 explores how episcopal leadership functioned via ritual, rumour and rhetoric in small (Western) communities.

undertaken to abide by Christian norms), transgression of the community's behavioural standards was met with exclusion. In the first centuries, only serious sins according to Scripture (later called mortal sins), were sanctioned with exclusion, e.g. apostasy, murder and adultery.[134] Before bishops emerged as the undisputed leaders in the third and fourth centuries, exclusion was agreed by the community as a whole.[135] In the fourth century, church councils produced norms to govern the use of excommunication against these most grievous types of sin; however, this remained more or less a 'therapeutic' exclusion and in most cases only from the liturgy (not all society).[136] A lay person who committed a major sin after baptism was permitted to redeem themselves only once by means of an act of public penance.[137] (The 'Irish' system of repeatable private penance did not reach Gaul until the seventh century. However, there are signs that similar means of reconciliation were trialled elsewhere across the West in Late Antiquity).[138] The administration of penance appears to have been relatively fluid, with much left to the discretion of the administering priest or bishop.[139]

As Christianity continued to grow over the fourth century, certain aspects of this 'system' of maintaining and policing lay piety appear to have become

[134] Exclusion of individuals from the Christian community as a means of enforcing certain types of behaviour had existed even in Apostolic times: it was referenced in the Gospel of Matthew 18:15-17 and Corinthians 5:1-5, 11; see Hinschius IV, 745; R. Greer, 'Pastoral care and discipline', in A. Casiday and F. Norris eds. *Cambridge History of Christianity* II, (Cambridge, 2008) 567 – 584, 580; Jaser, *Ecclesia*, 36

[135] Ibid., 36: in the Corinthians passage, Apostolic authority turned the society into a contemporary court to underscore a sexual prohibition; Pennington, 'Church', 392.

[136] Kober, *Der Kirchenbann nach den Grundlägen des canonischen Rechts* (Tübingen, 1857), esp. 376 – 433; Hinschius IV, 746 identifies the decay of faith (towards paganism, Judaism or other heretical beliefs); fornication (including adultery and prohibited marriages); and, finally, of murder citing respectively: Elvira 306, Arles 314, Neocaesaria 314-25, and Antioch 341 c. 1; Harries, *Law*, 192 argued the language of the *Didascalia Apostolorum* and *Constitutiones Apostolorum* emphasized the bishop's role to heal rather than punish.

[137] Greer, 'Pastoral Care', 581; On late-Antique penance: K. Uhalde, 'Juridical Administration in the Church and Pastoral Care in Late Antiquity', in A. Fiery (ed.) *A New History of Penance* (Boston, 2008), 97 — 120, at 98.

[138] Greer, 'Pastoral Care', 580.

[139] On the importance of discretion to episcopal justice K. Uhalde, *Expectations of Justice in the Age of Augustine* (Philadelphia, 2007), 10 - 12; and its relevance for the 'vagueness' of late-Antique penance, J. Hillner, *Prison, Punishment and Penance*, 72.

problematic. Perhaps simply the growth of communities forced church leaders to confront the fact people would commit further moral transgressions after their act of penance, and congregations became too large for clerics to shape people's behaviour via social pressure. (E.g. Augustine's frustration with the limitations of exclusion below). In the late fourth century, bishops started writing to the pope for clarification on how to handle lapsed penitents or returning schismatics.[140] Additionally, imperial law became available as a tool with which to tackle major crimes: murder, heresy, theft, adultery and so on. It is likely the combination of these factors which explains why episcopal councils produced fewer canonical 'rules' on lay behaviour towards the end of the fourth century. The underlying behavioural standards had not *necessarily* changed, but the means of articulating them had. Following chapters will argue that additional canons were generated on the 'control mechanisms' of exclusion and penance as imperial law and access to the pope became more problematic.

In summary, by the first half of the fifth century a relatively stable 'quasi-official' corpus of canon law had come into being, although it was not yet fully accessible in its entirety all across the Empire. When focusing upon canon law in isolation, it appears to have gradually evolved to become more like imperial legislation in terms of its form. The latter additions to the canon-law corpus, the 'ecumenical' councils of the late fourth and fifth century, were relatively well distributed but they performed a very different function to the canons of the early fourth century. They were in effect the organisational principles for a pan-imperial episcopal church and definitions of the disciplinary standards required from clerics. This chapter will now survey the relationship between canonical and imperial legislation.

[140] E.g. Siricius to Himerius of Tarragona J 605, on people who sinned after committing penance and continued to circulate in fifth and sixth-century canonical collections. C. Hornung, *Directa ad Decessorem. Ein kirchenhistorisch-philologischer Kommentar zur ersten Dekretale des Siricius von Rom* (Münster, 2011); ibid., 'Siricius and the Rise of the Papacy', in G. Dunn ed. *The Bishop of Rome and Late Antiquity* (Farnham, 2015). Innocent to Exusperius of Rouen J. 675: penance and communion should be available to the dying; Innocent to Decentius of Gubbio (J. 701) on whether public penance could be committed before Easter week.

1.B: Canon law and Empire

As the last section hinted, by the late-fourth and fifth centuries, ecclesiastical legislation was entirely intertwined with the wider imperial legal system. Both types of law 'functioned' via constant interaction between clerics, bishops, officials and emperors at all levels and in multiple regions. Much of this interdependence has been long acknowledged. Not only were there areas of overlap between imperial and canonical regulations, but both ecclesiastical organisational structures and the style of canonical regulations came to resemble those of the Empire.[141] Caroline Humfress has argued that the similarities between the procedural rules of ecclesiastical councils and imperial laws were elaborated and enhanced by forensically-trained clerics adopting the imperial law's procedures on a case-by-case basis, as 'raw material to be adapted and elaborated as necessary.'[142] Conversely, the gradual infiltration of 'Christian' influences upon the tenor and aims of imperial legislation are widely acknowledged. Various attempts were made to synthesise imperial and Christian legal traditions.[143] Nevertheless, the extent to which 'canon law' was enmeshed in the 'secular' imperial state only becomes fully apparent when imperial legislation is considered as a dynamic and demand-driven legislative process.[144] Once Christianity was legalised clerics and other religious

[141] Gaudemet, *formation*, 135ff. on the influence of imperial institutions; ibid. *Les Sources du Droit de l'Église en Occident du IIe au VIIe Siècle*, (1985). Certain ecclesiastical historians (usually Protestant) perceived this as a 'decline' from the vitality of the early church into legalism. E.g. the Lutheran, Sohm, *Kirchenrecht* 1923.
[142] Humfress, Orthodoxy, 210; On the modeling of church organization upon imperial institutions and law, P. Classen, *Kaiserreskript und Königsurkunde. Diplomatische Studien zum Problem der Kontinuität zwischen Antike und Mittelalter.* I (1955), 82-85.
[143] Honoré, *Law*, 122 identifying Christian quaestors; Harries, ch.7 on the transformation of punishment; Harries and Wood, *The Theodosian Code*, 143-58; Evans Grubbs, *Law*; cf. A. Lee, 'Decoding Late Roman Law', Journal of Roman Studies 92 (2002), 192f.
[144] Noel Lenski put it more eloquently in his study of the use of legislation in the Donatist dispute: 'The law was not a monolithic artefact but an intersubjective dialogue that came into being and was invigorated by the ever-unfolding interplay between (on the one hand) petitioners, plaintiffs and appellants and (on the other) the emperor and his officials.' 'Imperial Legislation and the Donatist Controversy: From Constantine to Honorius', in R. Miles ed. *The Donatist Schism, Controversy and Contexts*, (Liverpool, 2016), 166 – 220, at 169.

professionals gained access to the currents of imperial legislation circulating between subject and emperor, by which rights and privileges were obtained and imperial officials induced to enforce a decision.[145]

A key indicator of just how important the ability to solicit and deploy imperial legislation was for the evolution of the institutional church lies in the emergence of the office of *defensor ecclesiae*, which, in the first quarter of the fifth century, became a permanent legal expert employed by churches.[146] The office was made invaluable during the disputes between Catholic and Donatist churches in North Africa.[147] Two separate councils of Carthage petitioned the emperor for the ability to appoint permanent *defensores*.[148] Rival bishops exploited legislation to disadvantage one another, for example by subjecting rival clerics to close tax inspection.[149] However, the office was rapidly adopted elsewhere particularly in those wealthy or prestigious churches, such as those

[145] Lenski's chapter provides a brief overview of the types of 'legislation' available in the late Empire. The entire system turned on the principle that *principi placuit leges habet vigorem* (Ulpianus *Inst.* 1). These included: *edicta, mandata, decreta, rescripta, litterae*; issued in response to *libelli, legationes, relationes, suggestiones, appellationes/interpellationes*.

[146] On the emergence of the *defensor ecclesiae* as a permanent ecclesiastical office, see C. Humfress, 'A New Legal Cosmos: Late Roman Lawyers and the Early Medieval Church', in P. Linehan and J. Nelson eds., *The Medieval World* (London and New York, 2013), 557 - 575. Humfress notes that *defensores* had been appointed on an *ad hoc* basis by churches throughout the fourth century, particularly as advocates in the legal cases arising from the Donastist/Catholic conflict in Africa, but also by Pope Damasus in 368 to petition the Urban Prefect for a restitution for the Roman church. They compiled dossiers comprised of 'extracts from the court proceedings, imperial letters and the acts of ecclesiastical councils'.

[147] Humfress, argues the essential context for the 407 petition was Stilicho's tolerance of Donatists, which the African bishops were keen to mitigate with additional legal capabilities.

[148] Carthage 401, c. 11 (Munier ed., 1974, p. 202 lines 686 – 90); whose stated rationale for acquiring a *defensor* mirrored CTh 1.29.1 (368) in which Valentinian granted municipalities in Illyricum the right to appoint a *defensor ecclesiae*; i.e. in order to protect the poor and plebeians respectively, from the predations of the rich. Carthage 407 (CCSL 149, 215f.) which mandated two bishops to travel to the imperial court and petition for the right for churches to appoint *defensores* was permitted for priests of the imperial cult, the *sacerdotes provinciae*. They were also to request that the *defensores ecclesiae* have the right to enter the private chambers of judges –i.e. to plead whilst the judge was deliberating; see CTh 16.2.38 (407) Honorius and Theodosius to the Proconsul of Africa.

[149] Brown, *Poverty and Leadership*, 30 pointing to the rapid series of tax exemptions and 'hostile audits' sought by rival congregations in Alexandria.

at Rome, which most often faced contentious disciplinary, organisational or doctrinal questions.[150] With the promulgation of the Theodosian Code in 438, the edicts permitting churches to appoint *defensores* were given general validity and the office appears to have spread forthwith.

Defensores ecclesiae could solicit imperial rescripts directly and, just as importantly, were able to cite them as authoritative legal instruments in court, without first registering them with the *acta proconsularis*.[151] They indicate the premium churches placed upon navigating the imperial legal system efficiently and mark a key stage in the emergence of episcopal churches as a corporate entities.

Church councils solicited imperial laws. Carthage in 407 established a norm prohibiting remarriage, requiring such unions to be disbanded and their participants returned to their original partners, 'following the Gospel and apostolic teaching', sought an imperial law in order to secure its decision.[152] Likewise, Pope Damasus' council at Rome in 378/9 petitioned the Emperor Gratian to confirm a new system of ecclesiastical appeals. Gratian's edict, issued in response, was addressed to the *Vicarius* of Rome (not the pope or the episcopal council) and allowed the pope to hear the cases of bishops deposed in the Western Empire.[153]

Provincial churches were keenly aware of their bishops' appetite for imperial law. In the aforementioned council of Hippo 393 legislation was issued preventing bishops from travelling oversees without a letter from their metropolitan, which Turner and Munier interpreted as an attempt to curb

[150] Innocent I offered to loan seven *defensores* to the bishop of Senia (Croatia) in order to destroying heretics (Humfress, 'Cosmos', 572); Pope Zosimus' letter 21st February 417 (Ep. 9.3) made provisions for *defensores* who, though normally drawn from the laity, wished to join the clergy.
[151] Humfress, 'Cosmos', 571.
[152] Humfress, *Orthodoxy*, 208; Council of Carthage 13th June 407, *CCSL* 149. 218 II. 1230 – 4: '*...In qua causa legem imperialem petendam promulgari.*'
[153] Markauskas, *Privilege*, 136; the *Collectio Avellana* is thought to have been compiled under Leo I as part of an attempt to bolster papal authority (Kéry, *Collections*, 37).

appeals to the imperial court.[154] It is crucial to bear these legislative mechanisms in mind when assessing the transition from imperial to post-imperial Gaul. Under the functioning empire, a provincial bishop potentially might have found it easier to solicit any 'new law' he required from the imperial state, rather than waiting for (or organising) a church council.

Imperial laws proscribed heretical sacramental practices, such as rebaptism associated with the Donatists (and other sects).[155] They also regulated entry to, and the disciplinary standards of, the clergy: Constantine proscribed ordination for the descendants of *curiales*, limited the numbers of clerical positions and made the right to hold clerical office semi-hereditary in order to prevent too many *curiales* and wealthier citizens from taking advantage of the fiscal exemptions.[156] Legislation also dealt with the fiscal obligations of deposed clerics.[157] Bishops and popes generally acknowledged the ability of emperors to intervene directly in ecclesiastical disciplinary and administrative matters.[158] Imperial laws regulated not only monastic property and legal privileges, but also went as far as to determine where they could reside.[159]

[154] Dunn 'Apiarius', 14 Points out the initial proscription appears to have been unsuccessful given Innocent's letter to African bishops in 405 asking them not to travel overseas for 'frivolous reasons'.
[155] CTh 16.6.1-7; Humfress, *Orthodoxy*, 266.
[156] CTh 16.2.3 (320); 16.2.6 (326); J. Evans Grubbs, *Law and Family in Late Antiquity, The Emperor Constantine's Marriage Legislation* (Oxford, 1995), p. 25, n. 103.
[157] Sirm.9 issued in Ravenna (408) (CTh 16.2.39): specifying when clerics were deposed they were to be immediately vindicated to a municipal council or guild depending upon their social status; (discussed further in fifth-century Gaul chapter).
[158] Heather, *Restoration*, 314f. bishops at Chalcedon greeted Marcian as 'king and priest', a trope which built upon Eusebius' portrayal of Constantine and his Roman state as the 'vehicle for bringing humankind to Christianity.' Likewise, Pope Siricius' decretal to Himerius of Taragonna, mentioned that monks and nuns who broke their religious vows by eloping together were condemned by both civil laws and ecclesiastical regulations and should therefore be excommunicated and excluded from their communities (JK 255) (Zechiel-Eckes, *erste Dekretale*; Hornung, *Directa*).
[159] CTh 16.3.1 (390) monks to reside in deserted places, and CTh 16.3.2 (392) monks may access the municipalities. CTh 5.6.3 (434) (Brev. 5.2.1), ability of clerics to bequeath property; CTh 11.30.57 (398), clerics, monks or '*synoditae'* cannot vindicate convicted criminals, only request appeals where people are suspected of being wrongly convicted. The appeal to be heard by an imperial official. CTh 16.3.1 (390) & 2 (392), Monks must live in the desert amended so they may enter towns. Nov. Marc. 5 (Brev. 5), concerning testamentary bequests made in favour of monks and clerics.

Likewise ecumenical councils and the quaestor's office were *both* potential sources of law with regards to ecclesiastical structure.[160]

The legal definition of an '*ecclesia*', in the narrow sense of an individual ecclesiastical institution, appears to have grown out of piecemeal imperial laws regulating clerical property. Constantine's edict legalizing ecclesiastical property had been ambiguous with regards to who or what owned property. It permitted individuals to make bequests to the 'Catholic council'.[161] Christian communities seem to have positioned their churches as *collegia tenviorum*, societies with legal personalities dedicated to the mutual aid of a professional group. Inscriptions recording gifts of land to pre-Constanian churches used similar terminology to those found in donations to *collegia*. Likewise, Tertullian used similar terms in his description of monthly donations by the congregation to their churches. [162]

The vast majority of fourth-century legislation pertaining to organised Christian religion and property focussed upon the ability of clerics to solicit bequests or their personal exemptions from fiscal obligations.[163] The first reference to churches as corporate entities did not occur until 382, when a law exempting imperial officials from extraordinary taxes additionally mentioned that '...with regard to churches ('...*ecclesias...'*) rhetoricians, and grammarians

[160] CTh 16.2.45 (421), Theodosius II put Illyricum under the supervision of Constantinople, despite having been under the control of Rome for nearly sixty years. He did so with reference to the primacy of Constantinople established at the council of 381. Pope Boniface was forced to solicit his own rescript from the Western emperor, Honorius, in order to vitiate the decree. N.B. also the first reference to 'canones/regulae' in imperial legislation (Ohme, *Kanon*, 47).

[161] Constantine sanctioned citizens' ability to bequeath property to 'the most holy and venerable council of the Catholic church': '...*sanctissimo catholicae venerabilique concilio*...' (Pharr, 441; Mommsen & Meyer, p. 836); Lesne, Hist. Prop., introduction.

[162] Boyd, *Legislation*, 80; Bowes, *Private*, 64: churches never formally held status of *collegia religionis causa*, but seem not to have required state confirmation for collective property ownership; they simply held corporate property through the simple act of purchase.

[163] **CTh 16.2.20** (370) Valentinian against solicitation from widows and minors; **CTh 16.2.27** (390) forbad all appropriation of the property of a widow or deaconess to religious purposes or the execution of legacies to that effect, reserving their property for heirs, relatives and creditors; **CTh 16.2.28** (390) repealed 16.2.27; **Nov.Marc.5(.2)** (455) permitted widows, deaconesses and nuns to leave by testament, *fidei commissa*, or codicil whatever they pleased to churches, bishops, clerks or deaconesses.

of both branches of learning, the ancient custom shall remain in force.'[164] This clause constituted the earliest mention of '*ecclesiae'* as a category of 'person' capable of receiving proprietorial rights or privileges. The wording of the law, which cited as precedent 'old custom' ('...*secundum veterem morem*...'), perhaps suggests that exemptions conferred to individual clerics had gradually coalesced until they came to be viewed as an institutional tax remission for '*ecclesiae*'.[165] Only in the fifth century did legislators begin to acknowledge the idea that '*ecclesiae*' might themselves 'hold' property.[166]

Conversely, church property was rarely defined or protected (from external appropriation) in fourth-century canonical legislation. Canons which addressed questions of property largely concentrated on preventing clerics misappropriating 'church wealth', which was understood as common property of the congregation. A rare example from Antioch declared that bishops and clerics ought to know what belonged to the bishop privately and what was 'church property'. [167] Only latterly did church councils address practical questions surrounding ecclesiastical property. Chalcedon asserted episcopal authority to govern the property of all religious foundations in a bishop's diocese (i.e. including that of monasteries).[168] Hippo 393 (restated in 397), held

[164] CTh 11.16.15.

[165] Boyd, *Legislation*, 85 also draws this conclusion.

[166] Evans-Grubbs, *Law*, 138 – 39, notes corporate church property was not defined by Roman law until the fifth century. An edict of 434 clarified that the property of clerics and monks who died intestate or without heirs was 'to be incorporated into that of the sacrosanct church or monastery to which the deceased had been dedicated.' Trans Pharr; Mommsen & Meyer, p. 221 …*sacrosanctae ecclesiae vel monasterio, cui fuerat destinatus, omnifariam socientur*…'.

[167] Antioch 341, c. 24 Possessions of the church should be guarded and managed by the bishop to whom they are entrusted; priests and deacons ought to be thoroughly acquainted with the estate so nothing is lost. (Hefele English trans. Clark vol. II, 67).

[168] **Chalcedon, 451, c. 3** prohibited clerics managing property on behalf of the laity or becoming guardians unless compelled by law (L'Huillier, *Church*, 218f.); **c. 4** ruled episcopal consent was necessary in order to establish monasteries and oratories (ibid., 217-22); **c.6** anyone ordained priest or deacon must be attached to a 'city church', 'parish church', 'shrine' or 'monastery' (ibid., 223-25); **c. 17** bishops should control all outlying or rural *parochiae*, particularly those he administered for the last 30 years (potentially an adoption of the statute of limitations see above) (ibid., 251-54); **c.22**, clerics may not seize the goods of the bishop after his death (ibid., 259-60); **c. 24** that once a monastery had been consecrated by the bishop, its property was inalienable. (ibid., 261f.).

that property clerics or bishops acquired after ordination belonged to their church.[169]

As this outline indicates, most questions surrounding the nature, status, privileges and internal management of 'church property' were still developing as the Western Empire fragmented. Chalcedon 451 was the first ecumenical council to deal extensively with the management of ecclesiastical and monastic property within the episcopal hierarchy. Church councils remained focussed upon the internal management of ecclesiastical wealth. Imperial law was the default genre for defining the nature of church property (i.e. who actually 'owned' it), and its fiscal privileges; in addition to the mechanisms for protecting, transferring or leasing it.[170] In subsequent chapters we will see how bishops in post-imperial Gaul used their canons to answer questions which were addressed via imperial law in regions still part of the imperial legislative system.

As the work of Rapp, Harries and Humfress has shown, the *audientia episcopalis*, *privilegium fori*, and other 'legal' ecclesiastical privileges, such as the ability of *manumissio in ecclesia*, did not turn bishops into state officials but rather mirrored legal mechanisms held by other groups within Roman society.[171] The *audientia episcopalis* was a state-sanctioned mediation process, to which disputing parties could subscribe; any *boni viri* in Roman society could

[169] CCSL 149 110; see Humfress, *Orthodoxy*, 204 and below for discussion.

[170] On clerical exemptions from *munera*, Eusebius *HE* 10.7; **CTh 16.2.1** (313) and 2 (319); cf. **16.2.7** (330); **16.5.1** (326); exemptions from the *collatio lustralis,* **CTh 13.1**; **11.16.15** (382) exempt from taxes except *munera*; **16.2.40** (411) immunity extended to *munera*; **Nov. Val III, 10** (443) removed all burdens).see also Gaudemet, L'Église, 176-78; Jones *LRE*, 888; Boyd, *Legislation*, 76f.; T. Elliott, 'The Tax Exemptions Granted to Clerics by Constantine and Constantius II', *Phoenix* 32 (1978), pp. 326 – 36; P. Brown, *Poverty and Leadership*, pp. 28 – 32; A. H. M. Jones, II. 912; Barnes, *Constantine and Eusebius*, 794.

[171] Rapp, *Bishops*, 235-73; Harries, *Law*, 191-211; cf. Gaudemet, *L'Église et Cité. Histoire du droit canonique*, (Paris, 1994), 112 who describes justice of the church and secular justice as equal (and distinct); N.B. Ambrose in, particular, argued forcefully that bishops ought to be judged by other bishops. E.g. Ambrose Ep.X.75, citing a law of Valentinian I. However, Markauskas, *Privilege*, Appendix 1 'The Myth of the Fourth-Century Clerical Immunity', esp. 242 has argued that '...Ambrose was not asserting his universally acknowledged legal rights as a bishop, but seeking a way out of a vulnerable position in a specific context using what legal precedents he had available to him to make a contentious claim for immunity.'

(and were expected to) perform such a role.[172] The expectation that ecclesiastical disputes should be dealt with 'internally' paralleled the same expectation (and legally established principle) for guilds or military orders.[173]

Crucially, these ecclesiastical legal privileges were defined and redefined via imperial legislation. Local church communities could not carve out and legitimise new public responsibilities via their canons; or rather, even if they did, they appear eventually to have sought affirmation from the emperor. It is essential to reiterate Humfress' observation that these ecclesiastical legal privileges were defined piecemeal in response to queries arising from specific forensic actions. They evolved rapidly and as a result of continual contact and engagement by individual churchmen and women with the institutions and processes of imperial law. Almost regardless of the theoretical relationship between emperor and clergy, and because in practice so much of the Church as an institution was defined by imperial law –by definition the emperor's medium – the emperor had direct oversight of the institutional churches: not only as chief legislator, but also as senior appellate court capable of amending and clarifying existing prescriptions.[174] While there was clearly an acceptance that

[172] C. Humfress, 'The Bishops and Law Courts in Late Antiquity', p. 395f. Bishops can be found in patristic sources undertaking both formal and informal arbitration as any "upstanding" member of a given community could act; Rapp, *Bishops*, 242-245 it is difficult to define the precise nature of episcopal jurisdiction; J. Lamoreaux, 'Episcopal Courts in Late Antiquity', *Journal of Early Christian Studies*, Vol. 3, No. 2 (John Hopkins University Press, Summer 1995), 143 – 167; Cubitt, *Councils*, 73 episcopal mediation was limited to that between voluntary parties by the end of the fifth century; Gaudemet, L'Église, 230-42; Herrmann, *Ecclesia*, 205-32.

[173] Humfress, 'Thinking through legal pluralism', p. 234 onwards gives an overview of the myriad *fora* within which a dispute might be heard and the pervasively held right to *praescriptio fori*.

[174] This argument is at odds with the standard narrative accounts of the evolving relationship between emperor and church, which typically contrast Constantine's commanding role at the council of Nicaea with Theodosius I's abasement before Ambrose of Milan, two events which mark a period in which the imperial cult gradually died (G. Bowerstock, p. 299). Admittedly, when imperial power fragmented (i.e. during times of usurpation or civil war), bishops possessed a conceptual framework capable of rejecting imperial oversight on the basis that the emperor's 'temporal' or 'secular' authority was limited when it came to the Church and matters of religion: Julian's usurpation facilitated the Council of Paris 360/1 in which Gallic bishops subscribed to a letter directed towards their colleagues in the East and in which they rejected the Arian emperor, Constantius II's, 'worldly judgment', which they portrayed as the 'error of the world.' (Moore, 'Spirit', 18; cites Council of Paris 360/1, CCSL 148, 33; *Collectanae*

church communities had evolved separately from the imperial structures and would retain the ability to determine their own values and disciplinary and organisational principles, once Constantine assumed a position of leadership over the Church, emperors managed their bishops and organized ecumenical councils directly.[175]

Nicene Christianity became the established religion

One crucial cumulative effect of this process was that Imperial law turned 'Nicene Christianity', i.e. that based upon the doctrinal and disciplinary foundations secured by Theodosius I from the Council of Constantinople 382 onwards, into the 'established' religion by the mid-fifth century. From the 380s onwards, imperial law defined orthodoxy per se and increasingly also 'enforced' it.[176] Theodosius I (379 – 395) 'broke new legislative ground' by defining orthodox doctrine for his subjects and prescribing punishments for non-compliance.[177] The definition of orthodoxy was typically sought by emperors

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antiariana parsina of Hilary of Poitiers, in A. Feder, ed. *S. Hilarii episcopo Pictaviensis Opera* (Vienna, 1916) (=CSEL 65), 43 – 46; see also, Hefele-LeClercq vol. 1, pp. 903 – 962); M. Girardet, 'Gericht über den Bischof von Rom. Ein Problem der kirchlichen und der staatlichen Justiz in der Spätantike (4.-6. Jahrhundert)', *Historische Zeitschrift*, bd. 259, (1994), pp. 1 – 38 Who looks at three historical contexts to examine the authority of the bishop of Rome. His conclusion is that there is no historical basis for the legal view that the pope was under no-one's jurisdiction.

[175] Gaudemet, *formation*, 136 even Leo I did not challenge right of emperor to call councils.

[176] D. Hunt, 'Christianising the Roman Empire: the evidence of the Code', in J. Harries and I. Wood eds. *The Theodosian Code* (London, 1993), 143 - 159, p. 146ff. esp. for active period of legislation from 380s onwards; Markauskas, has argued that this function of imperial law was actually developed in the mid-century under 'Arian' emperors: *From Privilege to Proscription: The Transformation of Episcopal Conflict Across the Long Fourth Century. A thesis submitted to the University of Manchester for the degree of Doctor of Philosophy in the Faculty of Humanities 2015*. (Published Online, 2016), [https://www.escholar.manchester.ac.uk/uk-ac-man-scw:293736], 79 – 80 and 151ff, cites Constantius' reported edicts after the councils of Rimini and Seleucia (359) deposing bishops who did not affirm the creed: Socrates, *Hist. eccl.* II. 39, 39, 41, Sozomen *Hist. eccl.* IV.19. The laws reportedly allowed Nicene Christians to be afflicted with legal retribution, violence and even forced conversions.

[177] Theodosius issued two laws to this effect: the famous *Cunctos Populos CTh* 16.1.2, an edict to the People of the City of Constantinople, in which orthodoxy was defined as 'the religion which the divine Peter the Apostle transmitted to the Romans ... that is followed by the Pontiff Damasus and by Peter, Bishop of Alexandria, we shall believe in

after a consensus had been established amongst the bishops, and while emperors themselves might not have dictated the substance of theology, they nevertheless articulated it authoritatively via imperial edict.[178] The definition of orthodoxy was increasingly necessary since, from Constantine onwards, the Roman state diverted resources to Christian religion in the form of tax incentives and revenues.[179] Hence there was a need to determine who could legitimately receive this support.[180] As with all legislation, much of it was solicited by local constituencies of bishops in order to define what constituted an 'orthodox Christian.'[181]

Emperors could and did order heretical works to be burned and bishops to be banished.[182] Ultimately, those who did not subscribe to the state-defined Orthodoxy faced a raft of religious, legal and proprietary obstructions. These included denials of the freedom to gather for worship; ability to own buildings known as 'churches' (presumably, also their tax incentives– see below); freedom to teach their beliefs. Furthermore, those not actively subscribing to orthodox beliefs were excluded from senior offices, denied the ability to make

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the single Deity of the Father, the Son and the Holy Spirit, under the concept equal majesty of the Holy Trinity,' (February 380) – those who did not 'follow this rule' are adjudged '...demented and insane, [and] shall sustain the infamy of heretical dogmas, their meeting places shall not receive the name of churches, and they shall be smitten first by divine vengeance and secondly by the retribution of our own initiative, which We shall assume in accordance with divine judgment.'; further enactments included 16.1.3,; 16.5.6; 16.1.3.

[178] Price & Gaddis, *Chalcedon*, 6, characterising the approach first exhibited by the Homoian emperors Constantius II (337 – 61) and Valens (364 – 78).

[179] Below, pp. 49 – 50,

[180] The explanation (definition of orthodoxy required to identify who could receive state support) in S. Corcoran, 'From Unholy Madness to Right-mindedness: Or How to Legislate for Religious Conformity from Decius to Justinian', in A. Papaconstantinou, D. Schwartz and N. McLynn eds. *Conversion in Late Antiquity, Papers from the Andrew W. Mellon Foundation Sawyer Seminar, University of Oxford, 2009 - 2010* (Farnham, 2015), pp. 67 – 95, at 82.

[181] In the 380s, Ampilochius of Iconium ensured that new legislation addressed his concerns with Christian sects in his locality S. Corcoran Unholy Madness, p. 83, n. 75 cites CTh 16.5.7, 9 and 11; P. Thonemann, 'Amphilochius of Iconium and Lycaonian Asceticism', *Journal of Roman Studies*, 101 (2011), 185 – 205.

[182] Theodosius banished the patriarch Nestorius from Antioch and ordered all his works to be burned CTh 16.5.66 banished; CJ 1.1.3 works burned.

wills, or to give testimony in court. Similar restrictions applied to pagans and Jews.[183]

The existence of this legislation did not automatically lead to the suppression or material disadvantage of 'heretics'. There were no guarantees local officials or citizens would react to legislation and no state institutions akin to a prosecutor tasked with implementing the law.[184] Nevertheless, by the mid fifth century this legislative dialogue between bishops and imperial officials had produced a 'climate of opportunity', within which bishops or other local 'orthodox' agents could access and employ the imperial law in order to disadvantage rival groups.[185] The episcopate and its canons therefore matured in an environment in which new organisational complexity or tools to deal with problematic 'out-groups' could be quickly supplied by imperial officials, and in which the ultimate authority to police coercively the moral health of the populus lay with the imperial state (although, admittedly, informed by the expertise of the episcopate).[186]

That the ability of bishops to enforce ecclesiastical discipline and to moderate standards of popular religiosity were implicitly underwritten by the frameworks of imperial justice is strongly suggested by that fact that when disputes between bishops became really heated, they tended to resort to the

[183] S. Corcoran, 'From Unholy Madness to Right-mindedness: Or How to Legislate for Religious Conformity from Decius to Justinian', in A. Papaconstantinou, D. Schwartz and N. McLynn eds. *Conversion in Late Antiquity, Papers from the Andrew W. Mellon Foundation Sawyer Seminar, University of Oxford, 2009 - 2010* (Farnham, 2015), 67 – 95 at 83; Hunt, *Christianising*, 147-49; Bowes, *Private* 198; Humfress, *Orthodoxy*, 235.

[184] Kelly's study of Augustine's attempt to quell popular anger against a governor who failed to take down a statue of Hercules, illustrates how complex the negotiation and enforcement of religious orthodoxy could be between bishop, imperial official and local populus; and how Augustine appears to have negotiated his position using imperial legislation protecting religious sites. C. Kelly, 'Narratives of Violence: Confronting Pagans', in A. Papaconstantinou, N. McLynn and D. Schwartz (eds.), *Conversion in Late Antiquity: Christianity, Islam, and Beyond, Papers from the Andrew W. Mellon Foundation Sawyer Seminar, University of Oxford, 2009 — 2010* (Farnham, 2015), 143 — 161.

[185] Heather and Moncur, *Themistius*, 56.

[186] Honorius writing to Arcadius in 404 'The interpretation of matters divine is the concern of bishops, compliance with religion is ours.' trans. Honoré*, Law*, 2, n. 20.

mechanisms of imperial law.[187] Perhaps the most striking example was when the established episcopal hierarchy in Hispania moved to reject Priscillian and his followers.[188] Priscillian represented a threat to most of the episcopate as the leader of an ultra-ascetic faction with considerable independent aristocratic wealth.[189] The basic point of contention was the extent to which episcopal office-holders should maintain an ascetic lifestyle.[190] It originated as a dogmatic and disciplinary issue, but in its resolution was transformed, by actions from both sides, into a question of occult magic requiring criminal sanctions.

The Priscillianists refused to attend Hydatius' Council of Zaragoza 380, organized to investigate them, and were effectively able to ignore their excommunication by the Council.[191] Priscillian was still elected bishop of Avila.[192] Priscillian's opponents were forced to solicit a rescript from Gratian (with the help of Ambrose in Milan), which deprived the Priscillianists of their

[187] Markauskas, *Privilege*, 137 'Many legal challenges to episcopal status focused not on theological grounds but established criminal charges: for example, treason, murder, or *maleficium*.'; Humfress, *Orthodoxy*, 260 onwards: 'The sheer number and variety of late antique processes initiated by ecclesiastics, against other ecclesiastics, is bewildering; as is the constant intertwining of 'secular' and ecclesiastical venues, despite repeated attempts to establish a working system of *privilegium fori* for bishops (if not for Christian clerics as a whole).'; ibid., 'Legal Pluralism', on forum shopping in general.

[188] H. Chadwick, *Priscillian of Avila. The Occult and the Charismatic in the Early Church* (Oxford, 1976); V. Burrus, *The Making of a Heretic. Gender, Authority, and the Priscillianist Controversy* (Berkeley, 1995); G. Dunn, 'Innocent I and the First Synod of Toledo', in G. Dunn (ed.), *The Bishop of Rome in Late Antiquity* (Farnham, 2015), pp. 89 – 109; Markauskas, *Privilege*, 95-121; Humfress, *Orthodoxy*, 243-44; Mathisen, *Factionalism*, 11-18.

[189] Priscillian was also supported by a pro-Nicene faction; Brown, *Eye*, 212, 'He was an intruder who had come from outside the lacklustre circles of the Spanish episcopate. He had been pushed into a bishopric by a ginger group of rich lay zealots.'

[190] Although there were also tensions over theology, the extent to which religion should be conducted in the private sphere, the relative status of un-ordained ascetics vs. clerics and bishops deriving their authority from legally-sanctioned institutions of the Church; Bowes *Private*.

[191] *Acta* of Zaragoza 380 (trans. Burrus, *Heretic*, 33-40).

[192] Contrast this with the council at Bordeaux ordered by Emperor Maximus to investigate the heresy of the Priscillianists. Letters were issued to the praetorian prefect of the Spanish provinces to force the Priscillianists to attend: there appears to have been no option but to attend. So, Chadwick, *Priscillian*, 43f. N.B. we rely on Sulpicius Severus' limited account of the council, no acts are preserved (written early fifth century in the West).

churches and sentenced them to exile.[193] Priscillian's opponents complained that they faced harassment from 'pseudo bishops and Manichees', two categories of undesirable liable to be sanctioned by imperial law.[194] The rescript compelled the Priscillianists to 'scatter and conceal themselves', and secondly, prompted their mission to the centres of ecclesiastical power in Italy.[195] Despite presenting a carefully constructed *libellus* outlining their orthodoxy and arguing against the use of the imperial law against them, the Priscillianists were unable to reverse their position by appealing to Pope Damasus or Ambrose of Milan.[196] They too were forced to operate via the imperial court, where they were temporarily successful in overturning their sentence of exile, regaining their churches in Hispania and even managed to consolidate their power so successfully that their persecutors were forced to leave the region.[197] Ultimately, however, the Priscillianists were unsuccessful, and the climax of the controversy was reached in imperial legal *fora* with Priscillian's own condemnation and execution, along with a number of lay and clerical followers, for the crime of *maleficium.*[198] Notwithstanding the accumulating imperial legislation on ecclesiastical *privilegium fori* (see below), in practice, the line between legitimate doctrinal debate (which could be settled in council), and dangerous heresy or witchcraft (which required imperial intervention) was porous.[199] 'Canon law' and church councils could be side-stepped in favour of

[193] Markauskas, *Privilege*, 105.
[194] Chadwick, *Priscillian*, 35. NB. Sulpicius Severus' account lamented this recourse to secular government.
[195] Ibid., 37.
[196] Ibid., 39.
[197] Priscillian expressed he preferred the judgment of bishops ('sanctorum iudicium') when appealing to Damasus for help (Priscillian, *Ad Dam.,* ll. 152-156; Markauskas, 108), but later as events suited him also demanded his case, then before an episcopal council in Bordeaux, be heard by the emperor (Sulpicius Severus *Chron*. II.50; Markauskas 116f.).
[198] c.385. Markauskas, *Privilege*, 117 notes that the second trial was driven by the accusation of Patricius, a lay lawyer associated with the Treasury. However, Markauskas also points out (p.95) that Priscillian's execution caused enough outrage to spur another 15 years of conflict and gave subsequent bishops like Ambrose ammunition to argue for episcopal judicial immunity.
[199] On the origins of the right to select one's forum, *privilegium fori*, Humfress, 'Thinking through Legal Pluralism', 241. N.B. Humfress cites further examples of such forum shopping including Bishop Chronopius appealing his deposition by episcopal

imperial dispute resolution with relative ease, if the former failed to produce a favourable outcome.[200]

A second example highlighting the implicit support provided to canonical discipline by the imperial law comes from the most fractious period in the Donatist dispute in North Africa in the early fifth century. Whilst church communities in North Africa had been divided since Diocletian, in the early fifth century the 'Catholic' episcopate were able to win a lasting (but incomplete) victory over the schismatic 'Donatists', which resulted in large numbers of churches and congregants transferring to the 'established' Church.[201] The victory was achieved by re-casting Donatists as heretics rather than merely schismatics, i.e. subject to loss of privileges and monetary fines under imperial law, and persuading Honorius' government in Italy that suppression of the Donatist heresy was essential to the preservation of public order and the integrity of the imperial state in North Africa.

For example, Lenski outlines the various stages of a dispute between the Catholic and Donatists bishops of Calama, Possidus and Crispinus respectively. After assaulting his rival, Crispinus was convicted of heresy before the Proconsul of Africa and fined 10 pounds of Gold. Possidus and his mentor, Augustine, then launched two appeals both to the governor and emperor Honorius (which resulted in a rescript) in order to mitigate the punishment against Possidus and thereby gain both moral superiority and the ability to influence who was and was not subjected to the crippling fine.[202] Likewise, after the Donatists resorted

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council at the proconsul of Africa. For legislation on the *privilegium fori* of the clergy, Herrmann, *Ecclesia* 227f. citing Carthage 397, c.9; CTh 16.2.47 (=Sirm.6) (a.425) (See also Chapters Two and Four).

[200] Cf. Humfress, 'Thinking through Legal Pluralism', on the ubiquity of forum shopping.

[201] Lenski 'Legislation', 170 divides imperial involvement in the Donatist dispute into four identifiable stages: 1) Constantine's first confrontation of divisions between churches; 2) Constans' attempt to coerce dissidents, which actually galvanized the Donatist cause; 3) limited engagement and moderate toleration under emperors Julian (361-3) through Theodosius (379-95); 4) in which 'a determined group of Catholic prelates under Aurelius of Carthage and Augustine of Hippo maneuvered the emperor Honorius' into a position to hammer the Donatists and suppress their political and religious impact by the time of the Vandal invasions.'

[202] Lenski, 'Legislation', 181f., citing CTh 16.5.21 (392), the law by which Crispinus was convicted, a decretum, two petitions, an appeal and a rescript issued between 403-4

to deploying *circumcelliones* (some sort of private enforcers)[203] to enforce their property claims, the Council of Carthage 404 (under Augustine and Aurelius' leadership) sent a *commonitorium* and a *decretum* to the imperial court requesting systematic enforcement of laws fining heretics and depriving them of their testacy rights.[204] They also requested assistance from the local authorities.[205] The requests resulted in a 405 edict from Honorius forbidding rebaptism, ordering union, denying the right of assembly for Donatists and threatening those stirring up sedition and torture.[206] There followed a series of petitions from Catholic bishops, and laws from local officials to coordinate the suppression of Donatist communities.[207] The process culminated in the Council of Carthage 411, which Honorius ordered his *Tribunus et Notarius*, Marcellinus, to call and preside over.[208] The imperial state and the Catholic episcopate in Africa might not have worked in 'lockstep' at the council of Carthage 411 (as some older accounts have portrayed it), but Augustine and his colleagues were successful in soliciting a new level of coercive state intervention on their behalf. Marcellinus issued an edict prohibiting Donatist meetings, ordering the restoration of property confiscated by the Donatists to the Catholics and the unification of Donatist and Catholic churches.[209] Whilst Donatist communities

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and described in two of Augustine's letters, Augustine and Possidus' *vitae* and a sermon.

[203] B. Pottier, '*Circumcelliones*, Rural Society and Communal Violence in Late Antique North Africa', in R. Miles ed. *The Donatist Schism, Controversy and Contexts*, (Liverpool, 2016), 142-166.

[204] Reg. Eccl. Carth, Exc, 10[93] (CSEL 149.211-14 requesting the enforcement of CTh 16.5.21 and 16.5.17 (389); Lenski, 'Legislation', 182 & 212f.

[205] ibid.

[206] CTh 16.5.38 and 16.6.3 (12th February 405) – survives in two fragments; see Humfress, *Orthodoxy*, 267-8. Also cf. Honorius' edicts directed to Gaul (Ch.2).

[207] Lenski 'Legislation', 183f., his 'Imperial Communications' nos. 92-104 (Appendix, pp. 213-16).

[208] CTh 16.11.3 (October 410); *Gest. Coll. Carth*. Edictum Cognitoris (CCSL 149A.177-9); on Carthage 411, N. McLynn, 'The Conference of Carthage Reconsidered', in R. Miles ed. *The Donatist Schism, Controversy and Contexts*, (Liverpool, 2016), 220 - 249; Humfress, *Orthodoxy*, 187 on the episcopal forensic skill.

[209] *Gest. Coll. Carth*. 1.4, 3.29 (CCSL 149A.54-5, 185-6); On the innovative nature of Honorius' legislation and the level of enforcement carried out by officials on the ground, see B. Shaw, *Sacred Violence: African Christians and Sectarian Hatred in the Age of Augustine* (Cambridge, 2011), 496 – 505; N. McLynne, 'The Conference of

did persist into the sixth century, the advantage gained in these decades by the Catholic churches was never reversed.

By the last quarter of the fourth century, the episcopate knew that, should they fail to assert or maintain their privileged position of leadership over public, 'orthodox' Christian religion, they could always turn to the imperial state and law to consolidate their authority by force. The emperor and his officials formed a useful backstop to episcopal authority and provided the ultimate mechanism for resolving leadership, disciplinary or organisational arguments. This function was a de facto reality. Whilst ultimately a similar partnership would be established under the Merovingians, an interlude of 'Arian kingship' challenged the parameters of the relationship between bishops and rulers and provided a spur to the evolution of canonical legislation in Gaul.

1.C The 'application' of canons

Imperial and inter-provincial contexts

This final section will examine how canon law 'worked' in the late-fourth- and fifth-century West, given how integrated it was with the imperial legal system and in light of the different legislative topics it addressed at different stages in its evolution. The extent to which individual bishops used canonical legislation to conduct their day-to-day business was relatively limited, not least because the law itself was not well-known and bishops enjoyed access to alternative, imperial mechanisms to uphold their status and resolve conflicts. Where canons really started to figure as an important source of authority was in the context of inter-regional disputes between churches, and the disciplinary proceedings of ecumenical councils. Even here, however, the citation of canonical norms was far from systematic.

Carthage Reconsidered', in R. Miles ed. *The Donatist Schism, Controversy and Contexts*, (Liverpool, 2016), 220 – 249 at 223.

Canons were 'cited' as authoritative norms in the context of ecumenical councils, particularly when doing so fitted the convening emperor's strategy of legitimation. At Chalcedon 451 the emperor Marcian needed to rebuild political (and theological) ties with the western emperor, Valentinian III, and churches led by Pope Leo.[210] The council was intended to overturn the doctrinal and disciplinary outcomes of the chaotic synod of Ephesus (449), in which the miaphysite Dioscorus of Alexandria had won a (temporary) victory.[211] Crucially, Dioscorus' 'victory' at Ephesus 449 had involved a chaotic council and the legally-dubious deposition of several episcopal rivals. Chalcedon, therefore, placed a strong emphasis upon procedural formality.[212] Each session produced a unanimous verdict from its adjudicating bishops. The words of each assenting judgment were recorded in the minutes, frequently with explicit affirmation that the decision was made 'in accordance with the canons'.[213] The attendees made use of a 'book' of canon law, in which canons were numbered continuously, and they cited specific canons whilst trying to resolve matters of church organisation.[214]

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[210] L'Huillier, *Church* 183 – 188; Price and Gaddis, *Chalcedon*, 'Introduction'; S. Hall, 'The organization of the Church', ch. 24 in A. Cameron, B. Ward-Perkins and M. Whitby eds. *The Cambridge Ancient History vol. 14 Late Antiquity: Empire and Successors, AD 425 - 600*, 731 - 744.

[211] On the miaphysite/Chalcedonian divide 5.C.

[212] Humfress, *Orthodoxy*, 185 on influence of forensic techniques in the proceedings.

[213] Half of the explicit affirmations that decisions were taken 'in accordance with the canons' were made in reference to the trial of Dioscorus of Alexandria, which suggests the emphasis on procedural regularity was a political tactic: Session 1: Dioscorus was questioned as to why he had not exercised his judicial capabilities 'in accordance with the canons'. He countered that he had been prevented from doing so by the count, Helpidius, bearing an instruction certified by the emperor. (First session, Price & Gaddis, *Chalcedon*, III, 165, §188-9.); Session 3: §24 Maximus, bishop of Antioch, Dioscorus ought to be summoned to appear again before the councils 'in accordance with the canons.' (p.46); Session 4: §3 Senate announced that (Dioscorus) should be excluded from episcopal dignity as directed by the council 'in accordance with the canons' (p.126); Session 10: §56 we launched an appeal to the councils of East and West 'in accordance with the canons' and been obliged to appeal on this matter to the Christ-loving emperor; Session 11: §13 whether a bishop had been ousted in accordance with the canons; Session 14: §155 we deposed a bishops 'in accordance with the canons' because he refused to appear before our council three times (p.59).

[214] L'Huillier, *Church*, 254-56 18th session (per Greek Acts) cs. 83 and 84 (Antioch 4 and 5); 12th session cited cs. 16 and 17 of Antioch during discussion of privilege of Constantinople, also a secretary read the *synodikon* of Constantinople 381. In the 19th

However, even at Chalcedon there were limits to the 'systematic' application of canon law. The charges against Dioscorus were 'deliberately vague' and he was ultimately condemned for failing to appear before the council.[215] Bishops in different sessions also cited the same canons from Nicaea with erroneous numbers.[216] Further irregularities in the 'application' of canons took place at earlier ecumenical councils: for example, whilst the attendees at Constantinople 381 cited the Nicene canon against the transfer of bishops between dioceses in order to oppose the appointment of Gregory of Nazianus, they apparently disregarded the Nicene canon against the ordination of neophytes as bishops when they ordained Theodosius I's choice of candidate, Nectarius, as bishop of Constantinople.[217] Even at grand, 'imperial' ecumenical councils, therefore, there was limited evidence for canons being 'applied' formalistically or systematically.

While the pope functioned in the West as the most prestigious arbiter of ecclesiastical tradition, he was not (yet) regarded as a legislative authority per se.[218] Nevertheless, access to the Pope as an arbiter effectively short-circuited any authority provincial Gallic church councils had to interpret canonical legislation for themselves. This point will be addressed more fully in Chapter

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session bishops quoted Nicaea, c. 6. (inexact numbering is probably a scribal error; ibid., 207). Bishops of Pisidia wrote to emperor Leo in 458 citing Antioch c. 4. The collection being used here has not been preserved.

[215] Price and Gaddis, *Chalcedon*, 45f.

[216] See Chalcedon 451, Session 13 (14 Greek), n. 22 (Price and Gaddis, *Chalcedon*, vol.3, 29) citing Nicaea 325, c. 4 as 'canon 6'. At another session of the council (involving Photius and Estathius; ibid. p. 37), the same canon was cited with small textual differences –perhaps indicating various unstable texts of the council of Nicaea were in use at the time.

[217] The bishops realised Nectarius had not even been baptised –Cyriacus, bishop of Adana undertook to teach him rapidly his duties as pastor. See L'Huillier, *Church*, 108. Nectarius then presided over the remainder of the Council until July 381.

[218] Notwithstanding the authority popes asserted for themselves, J. Cullen, 'The Development of the Appellate Jurisdiction of the Roman See', Church History vol. 57 (1988), pp. 29 – 42; W. Ullmann, 'Leo I and the Theme of Papal Primacy', *JTS* 11 (1960), pp. 26-51. N.B. Leo's decretal and Valentinian III's corresponding edict will be discussed at greater length in Chapter Two. Dunn, 'Innocent and Toledo', (esp.94f), downplays Innocent's authority over Spanish churches. C. Hornung, *Directa* and ibid. 'Siricius and the Rise of the Papacy', in G. Dunn ed. *The Bishop of Rome and Late Antiquity* (Farnham, 2015), Siricius asserted a legislative authority in the form of his letter. Also; K. Sessa, *The Formation of Papal Authority*; Herrin, *Formation* 103-6; Jones LRE, 212 onwards.

Two, where we will see how political disruption of the fifth century created conditions in which provincial Gallic church councils could develop their judicial and appellate functions.

Popes led the way in asserting the authoritative and binding nature of (Nicene) canons, particularly where they pertained to church organisation, partly because the primacy of Rome had been affirmed by a canon of Nicaea. Popes consequently had an interest in affirming the inviolability of the council's legislation.[219] However, in the late fourth century they tended not to 'cite' canons as definitively authoritative legislative instruments, rather they 'synthesised' canonical norms with exegesis or relevant imperial laws.[220]

The administration of canonical norms was dependent upon the imperial system, not least because the pan-imperial episcopate's collective knowledge of canon law was relatively fragile at the start of the fifth century. The *Causa Apiarii* at the council of Carthage in 418 illustrates this point.[221] Apiarius was a presbyter in Africa Proconsularis, who had been deposed by his bishop for various unspecified offences. He challenged a sentence levelled against him by a local council of bishops –the details of the original dispute are unknown– by launching an appeal to Pope Zosimus, who obliged Apiarius by sending *legati* (a bishop, Faustinus of Potentia, and two presbyters) with instructions (a

[219] See Pope Leo's argument in favour of the inviolability of Nicaea made to reject Chalcedon's elevation of Constantinople to a position of parity with Rome (Hall 'Organisation, 732).

[220] E.g. Siricius' prohibition of rebaptism in which he invoked the apostle, Paul, the canons of the synods, the annulment of the synod of Rimini and a decree of predecessor, Liberius. (A. Ferreiro, 'Pope Siricius and Himerius of Tarragona (385): Provincial Papal Intervention in the Fourth Century', in G. Dunn ed., *The Bishop of Rome in Late Antiquity* (Farnham, 2016); Zechiel-Eckes *erste Dekretale,* 410f; or Innocent and Leo I's letters on (re)marriage, which were according to Sessa neither legislation nor forensic judgments and defy traditional models of 'public authority'(K. Sessa, 'Ursa's Return: Captivity, Remarriage, and the Domestic Authority of Roman Bishops in Fifth-Century Italy', *Journal of Early Christian Studies* vol. 19, no. 3 (2011), 401 - 432).

[221] Dunn, 'Apiarius'; Humfress, *Orthodoxy*, 178 onwards; J. E. Merdinger, *Rome and the African Church in the Time of Augustine* (New Haven and London, 1997), 111 – 135; Caspar, *Geschichte*, 358ff; Hefele, vol. 2 (English trans.), 463; Cross, 'African Canons', esp. 240 onwards; Munier, *Concilia Africae*, 79 and 90 – 93.

commonitorium) to hold a synod in Africa in 418.[222] The matter was to be decided by the African episcopate, but with papal oversight. Famously, the African bishops who met at Carthage in Autumn 418 wrote to Zosimus informing him they intended to delay the proceedings, the reason being that several canons cited in his *commonitorium*, which amongst other things confirmed the right of certain clerics to appeal to Rome and were labelled as belonging to Nicaea (see below), did not match their own copy of the canons of Nicaea.

Zosimus at this point died (26th December 418).[223] However, his successor, Boniface I, continued the case and the mandate of the *legati*, who might or might not have remained in Carthage in the meantime.[224] At the next council at Carthage in 419, the African bishops repeated their suggestion to the papal *legati* that the Roman excerpts of Nicaea were potentially incorrect. They decided they would read aloud their own copy of the canons of Nicaea, which the African Church had received from archbishop Caecilian, who had been present at Nicaea.[225] They also suggested Boniface might check his copy of the canons, or they would appeal to Constantinople, Alexandria or Antioch to check whose citations were correct, those of Rome or Carthage.[226] Eventually, the parties opted for a compromise: to defer to the excerpted canons from Rome, whilst a definitive answer was sought regarding their provenance. Ultimately, Apiarius confessed to unspecified wrongdoing, was forgiven by the African Council and allowed to retain his status as a presbyter but in a different diocese.

There are three points of note, all of which stem from the disputed *commonitorium*. Firstly, and most importantly, the collective ecclesiastical knowledge of the content of canon law was fragile. The Pope had made a fairly serious error regarding the contents of *the* most fundamental legislative council, Nicaea 325, whose creed and canons had been promoted as the

[222] See p.64 below for contents.
[223] Hefele, vol. 2, 464.
[224] Hefele, vol. 2, 465 thinks so.
[225] Hefele, col. 2, 465
[226] Carthage, (25th – 26th May 419) *Acta* (CCSL 149, 91).

cornerstones of state-backed orthodoxy since the 380s. This was not a straightforward scribal error – a bishop and two clerics had travelled over 360 miles (possibly twice) ostensibly on the basis of these canonical excerpts. Additionally, we might infer from the African bishops' response that neither they nor the *Legati* were familiar with the canons of Serdica; if they had been, someone amongst the 217 attendees at Carthage might have noticed the error was one of mistaken attribution.

The episode suggests that the chronology of canon-law compilations identified in Section 1 potentially parallels the contemporary knowledge of canon-law, in the sense that the *Causa Apiarii* predated the earliest known African collections to be based upon the Nicene Corpus. Meanwhile the attendees at Carthage 418 asserted that their own knowledge of the Nicene canons was derived from a textual tradition originating from the African attendees at Nicaea almost a century before, i.e. independent of any non-African traditions. If true, this might indicate that canonical norms really did not pass frequently between Africa and other western churches before, perhaps, the 410s/420s. In light of this possibility, the emergence of influential compilations in other parts of the West towards the end of the fifth / start of the sixth century (e.g. the *Statuta Ecclesiae Antiqua, Quesnelliana* and Dionysius Exiguus' compilations) were potentially much more significant turning points in the history of Western canon law than most non-canonists normally tend to assume. They might mark the first point at which a working knowledge of components of the Nicene Corpus existed in the provincial western churches. Furthermore, the incident suggests that 'canon law' was transmitted along- and pooled at traditional 'imperial' lines of communication and centres, places like Rome and Constantinople, where collections of legislative materials and officeholders with the authority to interpret them could be found. Local canonical legislative traditions, even mature ones such as that of the fifth-century African Church, deferred to the canon-law mainstream, as promoted by these central figures of authority.

Secondly, the episode indicates that even in a context where potentially quite considerable costs had been incurred to argue a case on the basis of a

handful of excerpted canons, surprising liberties were taken with the contents of the *commonitorium*. As Dunn pointed out, the excerpts provided did not even seem to fit the facts surrounding Apiarius' right of appeal; yet, this appears not to have troubled Zosimus, his *legati* or the attendees at two African councils.[227] Just as at Chalcedon some decades later, the citation of canons by bishops could be surprisingly vague, even where great expense was made to conduct formal proceedings according to written norms.

These examples have, I hope, illustrated that, in the West at least, canons were often emphasised as 'hard' authoritative norms in the context of interregional and organisational disputes and in high-stakes disciplinary proceedings (usually tied to an underlying political imperative – such as securing a new imperial dynasty etc.). However, even in these contexts there were frequent inconsistencies or oversights in the use of canonical regulations.

Provincial contexts.

The use of canonical regulations at a provincial level was strikingly different, particularly where bishops weighed up a course of action on their own. The letters of Augustine provide a useful case study for several reasons. He was heavily involved in the formulation of conciliar legislation.[228] He was

[227] Zosimus raised four points in his *commonitorium* (N.B. we learn about this from Carthage 419's letter to Boniface; Mansi, iii., p. 831) : 1) the right of the Roman bishop to adjudicate *episcopal* appeals to Rome (citing Serdica 343, c. 7); 2) unnecessary trips overseas by bishops to the imperial court; 3) the rights of lower clergy to appeal to neighbouring bishops regarding sentences imposed by their own bishop (Serdica, c. 17); and 4) a possible sentence of excommunication against Urban if he failed to correct himself. Neither of Zosimus' first or third points appear relevant to Apiarius' appeal: he was not a bishop (cf. Serdica, c. (5) 7), nor was his appeal to a neighbouring bishop (cf. Serdica, c. (14) 17). Furthermore, the African Church had its own legislation affirming essentially the same right formulated in Serdica, c.17 (cf. *Registri ecclesiae Carthaginensis excerpta*, c. 25 (CCSL 149, 227)). The African bishops' objection to this canon on the grounds of misattribution was (in light of their own similar rules) either obstructionism or symptomatic of a lack of knowledge of their own legislation.

[228] Cross, 'African Canons', 229, highlights Augustine, ep. xxii. 2., to Aurelius of Carthage, he suggested '...through the weighty sword of councils and your own weight,

also, as we have seen, a skilful strategist when it came to manoeuvring through the imperial/ecclesiastical legal system to prevail over the Donatists. Furthermore, late fourth- and fifth-century Africa had one of the most extensive traditions of local canonical legislation and compilation. Finally, while he was certainly well-connected within the local African Church, Augustine's day-to-day episcopal duties were not conducted at an imperial centre like Rome or Constantinople. His extensive letters and sermons cast a singular light upon the activities of a 'provincial' bishop operating within the functioning, fifth-century Western Empire. However, while Augustine might have occasionally presented his episcopal role as akin to that of a secular magistrate, reminding his congregation of the dangers of Divine judgment, this view did not extend to him interpreting canonical disciplinary norms in a legalistic manner.[229]

Whereas bishops in ecumenical councils (or even the *Causa Apiarii*) had based entire strategies upon the supposed validity of certain canons, in Augustine's letters he frequently failed to mention them as an authoritative source of disciplinary or organisational procedure. For example, there are two (undated) letters in which Augustine discussed disciplinary action taken by his episcopal colleague, Auxilius, against a count, Classicianus, who was alleged to have violated church sanctuary in pursuit of some debtors. In the first letter, to Auxilianus, Augustine challenged the bishop's sentence of excommunication against the count and his entire family.[230] He ran through the possible justifications Auxilianus might present in defence of this unusual collective punishment. These included scriptural citation, prior action taken by a priest of great reputation or direct divine inspiration. As Rachel Stone has noted, Augustine made no reference to canons as a potential source of action in this letter, despite the fact that he was rebuking an episcopal colleague for wrongly excommunicating innocent people, an act for which there was no canonical

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bring healing to the many carnal sores and disorders, which the African Church is suffering in so many quarters and lamenting in so few.'

[229] On Augustine's presentation of episcopal office as akin to that of a magistrate, Humfress, *Orthodoxy*, 155.

[230] Ep. 250, The Works of St Augustine, a Translation for the 21st Century, Letters 211 - 270, 1* - 29* (Epistulae) II/4 trans. and notes by R. Teske (New York, NY, 2005), 183-5.

justification.[231] Had canons been perceived as a primary, binding code for episcopal disciplinary action, one would surely have expected Augustine to mention them amongst his list of possible authorities.

In his second letter, to count Classicianus, Augustine lamented the lack of canonical legislation commenting: 'I wish that at the occasion of your case the bishops would decide upon some policy that we should follow from then on in such cases. But at present there are no conciliar decrees, or if perhaps there are, I do not know them.'[232] Ultimately, Augustine decided against the validity of collective excommunication, unless the sentence was reached 'by the collective harmony of all', and that he wanted to 'handle the matter in our council and to write to the Holy See, if necessary.'

For Augustine, the provincial bishop, canons were guides and (as per Hess' and Gaudemet's view on early sixth-century canonical authority) influential as an expression of consensus. However, there is little evidence of Augustine invoking them as authoritative per se, to the extent that their content was the final, determinative factor in establishing a course of action.[233] At the same time, Augustine's ready admission that there may be canonical legislation of which he was unaware, and that he might have to refer to 'our council' (presumably the pan-African councils at Carthage) or to the pope, support the pattern seen in the *Causa Apiarii*: even in Africa Proconsularis, with its rich canon-law culture and strong sense of its own identity, correct procedure according to 'canon law' was often determined in conjunction with the wider imperial Church.

Augustine's correspondence also highlights the limits both of conciliar legislation to constrain non-clerics and of excommunication as a 'control mechanism'. In a memorandum to Alypius, Bishop of Thagaste, regarding an *honestus*, who had obtained some sort of injunction from Pope Celestine,

[231] R. Stone, 'Canon law before canon law: using church canons, 400-900 AD', paper presented to Cambridge Late Antiquity Network Seminar, 11th September 2014.
[232] Ep. 1* trans. Teske, II/4, 227-29.
[233] Augustine did, however, often emphasized the 'auctoritas' of pan-African church councils; see (Cross, 'African Councils', above). He also encouraged his colleagues to use 'the threat of human judgment' and 'divine judgment' to prod their congregants into behaving well (Humfress, *Orthodoxy*, 155f.).

Augustine lamented the fact that excommunication had only limited efficacy and even yearned for more effective levers of control.[234] The *honestus* had been beaten by a group of clerics for having raped a nun, but nevertheless had secured some kind of official condemnation of the clerical violence rather than his own crime. Augustine expressed his deep frustration that Alypius would probably have to punish the clerics yet have no further means to punish the *honestus* beyond excommunication, arguably confirming the view that excommunication became somewhat toothless in a context where Christianity was no longer composed of small, tight-knit, minority communities governed by a bishop (and in which the threat of Donatism had effectively receded –if only temporarily). It is also of note that it appears not to have occurred to Augustine that numerous imperial edicts had been issued which might offer some recourse against the *honestus*; perhaps he was mindful of the general disapprobation for bishops requesting criminal prosecution in day-to-day life.[235]

The limitations of 'canon law' as binding, prescriptive norms and of the bishop's ability to enforce discipline on the laity do not mean that bishops like Augustine did not attempt to police the behaviour of the populace; only, that when they did seek to 'coerce' the laity they appear to have resorted to less formal mechanisms. This is reiterated in another letter of Augustine's in which he asked unnamed clerics in Thagaste to petition a local landholder whose foreman had raped a nun.[236] Augustine mentioned that the man in question had already been deprived of communion and prescribed penance, but that in order to set an example, it was also desirable that '...just as he would lose the honour of his rank if he were a cleric, so this man also ought to lose the honour

[234] Ep 9* 27th August between 422 – 429; II/4, Teske.
[235] I.e. not when facing an extraordinary threat from supposedly violent heretics (Donatists); CTh 9.25 (354), that ravishers of holy maidens or widows were to be punished, or CTh 9.25.2 (364), which prescribed capital punishment for the same. CTh 9.25.3 (420), that ravishers to lose their property and by subject to deportation. See above on Honorius' law against Donatists for idea he relieved African Catholic bishops from engaging in unseemly criminal suits.
[236] Ep. 14*, Teske, *Augustine*, 290f.

of his position as procurator, in which his impunity is inflated with pride.'[237] The man had not freely confessed to his crime and Augustine was keen to deter others from similar actions. Augustine thus sought to exert social pressure upon this lay man. It should also be noted here that the episcopal responsibility to protect holy women (and vulnerable *pauperes*) could act as a catalyst for bishops to seek to exert influence greater influence over lay society. This dynamic became extremely important in the social upheavals to occur in fifth- and sixth-century Gaul.[238]What was absent from Augustine's correspondence, however, was any idea that canons –such as those from the early fourth-century Greek east which contained extensive norms for the entire Christian community and which might not even have been known in early-fifth-century Africa– mandated him as bishop to coerce his congregants.

The only time Augustine came close to viewing ecclesiastical canons as some kind of binding legislation for the entire community was during the state-backed suppression of Donatism. In Ep. 28* Augustine exhorted his colleague, Novatus, bishop of Sitifis in Mauretania, to have the acts of a recent council of Carthage read out in his church.[239] They concerned the recent return of numerous Donatist churches to the Catholic fold, after imperial edicts and a large council at Carthage had effectively ended the schism.[240] The council to which Augustine referred was almost certainly that of Carthage 418. Canons 1 – 8 condemned Donatist beliefs on Adam, the cleansing power of Baptism, Christ's forgiveness, the role of grace in the remission of sin; cs. 9 – 17 dealt

[237] ibid.

[238] In Ep. 24* Augustine sought legal advice from the jurist, Eustochius, regarding the enslavement of children born into different types of marriage and the ability of parents to sell their children into slavery. The need to fulfill effectively their *patrocinium pauperum* created a substantial demand for law amongst bishops in post-imperial contexts.

[239] Teske, *Augustine*, 330 – 32.

[240] Augustine references a large number of Donatists having returned and only a handful having been driven to recalcitrance by the coercive measures of secular officials. 'The only exceptions were a small number of officials whom an intervention of the judge made more recalcitrant and alienated, as it were, from the constraints of the laws.'

with practical mechanisms for reconciling former Donatist and Catholic communities; and cs. 18 and 19 dealt with general disciplinary matters.[241]

Augustine specified that the purpose of the reading was to ensure that returned Donatists '*…learn the great evil from which they have been set free by such an insistent action. In that way they may be retained in the Catholic peace not only by the fear of temporal penalties but also by fear of eternal fire and by love of truth*.' I.e. the purpose was primarily doctrinal education to complement the secular laws compelling their return.[242] There is no indication that Augustine instructed the action to make the lay congregation aware of the regulations on ecclesiastical organisation or discipline. Furthermore, Augustine was very specific about the way in which the acts should be read out, suggesting that this was an extraordinary measure.[243] The letter therefore suggests that standard disciplinary canons were not read out in church in order for the laity to know them (a development which would occur in sixth-century Gaul).

Even in relation to questions of church organisation or hierarchy there is little evidence that canons were 'used' in the same formalistic way that they (sometimes) were in the fraught disputes addressed at imperial centres. For example, In Ep. 18*, Augustine informed the church at Memblibanum that he could not ordain the man they had selected, Gitta, as a priest. Augustine had discovered he should not even be a deacon because of past impious acts.[244] Augustine encouraged the community to resume their search and offered to suggest a candidate. However, he made no mention of canonical regulations upon the subject.[245]

The same ambivalence towards canonical regulations is visible in relation to the subject of the transfer of bishops between dioceses. In Ep. 22* to his

[241] CCSL 149, 67-79.
[242] Teske, ibid.
[243] He specified that Texts were not to be read out from the lectern, like canonical scriptures, but casually so people could sit and listen if they want to 'as if they were being read privately at home.'
[244] Teske, *Augustine*, 295.
[245] He could have cited Nicaea 325, c.9 barred men who had sinned from being ordained (L'Huillier, *Church*, 62); N.B. the *Causa Apiarii* implies Nicaea was well recorded in Africa.

colleague, Alypius, Augustine discussed whether or not to accede to the citizens of Caesaria's request for a neighbouring bishop to be transferred to their diocese. Augustine considered a canon of Nicaea against transfer between bishoprics but ultimately ignored it in his recommendation.[246] Crucially, the canonical proscription of episcopal transfer from the council of Nicaea did not seem to rule it out as a possibility for him.[247] The contrast with the *Causa Apiarii*, in which the African episcopate at Carthage had objected to the procedures proposed by papal *legati* on the basis that their citation of Nicaea was spurious is striking. In day-to-day disputes between neighbouring sees, Nicaea might or might not form a basis for action; whereas in the context of a large council and disputed points of authority between the churches of Empire, the content of 'authoritative' canonical legislation was highly valued.

Conclusions

Canons were produced in greater quantities in the East during the fourth century. In the West, a large volume of disciplinary canons were not produced until the late fourth century, whilst compilations of canons are first identifiable for Gaul in the fifth. By this point, imperial legislation had come to regulate numerous areas of religious professionals' lives (i.e. those of clerics, monks and other dedicated individuals). This included select areas of ecclesiastical discipline, their legal privileges, property rights, the status of churches, as well as certain questions of ecclesiastical organization. Canons, by contrast, were focussed more narrowly upon clerical discipline, episcopal hierarchy and church organization. Canons only dealt with the laity in relatively limited terms, i.e. to define their participation in certain aspects of ritual or to police the boundary between laity and clergy. Penance and excommunication were relatively 'underdeveloped', aiming to exhort, encourage and cure the lay transgressor rather than to punish. Imperial law, by contrast, had come to play an expansive

[246] Teske, *Augustine*, 314.
[247] Nicaea 325, c.16 (L'Huillier, *Church*, 74).

role in policing the morality of orthodox Christians and also in regulating non-orthodox groups.

In terms of the 'usage', the collective knowledge of canonical legislation was extremely uneven. Even in centres of learning with a high density of churches and prestigious church officials, such as Rome, the fundamental components of canon law could be cited incorrectly into the fifth century. At the provincial level, bishops might rely on canons as expressions of church consensus, but they were not commonly cited in a 'legalistic' manner as a source of authority. Bishops at all levels were equally as likely to solicit or cite imperial law in order to resolve disciplinary disputes, or questions of ecclesiastical hierarchy. The rise of the *defensor ecclesiae* and the tactical deployment of imperial law in the Priscillianist and Donatist controversies indicate the fundamental role imperial law played in underwriting ecclesiastical discipline. Episcopal legal privileges or powers, such as the *audientia episcopalis* and *privilegium fori*, were defined in contrast to the 'normal' workings of imperial justice. They were legal institutions which had developed within the imperial legal system. Similarly, episcopal authority, both suffragan and metropolitan, overlay imperial administrative boundaries. The following chapters deal with how 'canon law' was affected once the parameters of this legal ecosystem started to shift in the fifth and sixth centuries.

Chapter Two: Imperial Fragmentation, Successor-Kingdom Formation and Canon Law c.400 - 536

Under the functioning imperial system, provincial ecclesiastical councils sought, received and cited imperial laws on a range of subjects in addition to formulating their own decisions and normative rules using concepts and models found in imperial law. This chapter will identify factors which transformed this activity and paved the way for Gallic bishops to become innovative shapers of ecclesiastical legislation in their own right. It will argue that, in addition to the ongoing 'organic' evolution of Christianity into a mass religion, which underpinned the growth of ecclesiastical legislation, the political fragmentation of the Western Empire also had a direct impact upon the development of canon law in Gaul.

The chapter seeks to explore how the political disintegration of the Western Empire c.405/6 – 537 impacted canon law in Gaul. The political disintegration of the Western Empire in Gaul started in 405/6 when assorted coalitions of 'peoples', in the first instance Vandals, Alans and Suevi, forcibly crossed the Rhine *limes*.[248] They were not the first people to do so, a coalition of 'Goths' having crossed the Danube in 376.[249] Neither were they the last.[250] Over the following decades Vandals, Alans, Suevi, Franks, Burgundians and

[248] Halsall, *Migrations*, 210-20; P. Heather, *The Fall of the Roman Empire: a new history of Rome and the barbarians* (Oxford, 2005), 148 onwards; and below for key narrative points. Jerome lists a series of captured towns from the 405/6 invasion, which imply the forces dispersed rapidly throughout Gaul. On 'ethnicity' of the incoming groups, see below.

[249] Halsall, *Migrations*, 165-219; Heather, *Goths*, 131-8.

[250] They were followed by several groups. The Franks captured Cologne in 459 and gradually advanced south to the Loire by 507. They were initially allied with sub-Roman king, Aegidius against the Goths. Largely known from Gregory of Tours see, Scholz, Merowinger, 30-34; Halsall, *Migrations*, 263. The Burgundians were settled by Aetius in Sapaudia (between Léman and Windisch) in the 440s. In 456 after campaigning for the rump-imperial state in Hispania they seized territory around Lyon (ibid., 248, 262). The Huns like many groups were initially employed by the Empire as mercenaries , but by the 440s a 'Hunnic Empire' had established autonomous power in the Rhine region. (Ibid., 252).

Visigoths spread throughout Gaul and Hispania with some violence, and catalysed a string of usurpations, as local British and Gallo-Roman elites organised their own defences and rejected rule from the imperial centre, the western imperial capital having returned to Italy in the 390s. Central imperial governments in Italy, most notably led by the generals Constantius Flavius (fl.410s–421), Aëtius (433–54), and later Ricimer (456–72) reasserted direct rule over much of the West by playing off 'barbarian' groups against one another.[251] However, the territory and tax revenues accessible to the imperial state were gradually and, after the Vandal conquest of Africa in 439, irrevocably diminished, until successive portions of the former Western Empire broke away into 'successor kingdoms'.[252] By the time the 'last' western emperor, Romulus Augustus, was deposed in 476, most landholding elites north of the Alps had already stopped meaningful political, institutional and (to a lesser extent) legal relationships with the central imperial authorities. 537 is taken as a turning point in this dissertation, since it was the point at which the Frankish hegemony over Gaul was secured and the Eastern Empire recognised Theudebert as a successor king in the West.[253] Thereafter, the vast majority of Gaul was ruled by one or more members of the Merovingian dynasty.[254]

Within this chapter, 2.A focuses upon the first half of the fifth century in Gaul. It will argue that well before the formation of recognisable 'successor kingdoms' in the second half of the fifth century, Gallic ecclesiastical and secular elites, notably under Hilary of Arles (Bishop 429-449), started to modify the legislative output of their ecclesiastical councils and to take on a greater degree of agency in generating and applying norms, which would normally have been

[251] Constantius (Halsall, *Migrations*, 220-24); Aëtius (ibid., 242-55); Ricimer, (ibid., 266-78).

[252] Goths were referred to as *foederati* in Gaul after 418/19 (see below) ; on the string of usurpations, see below; On *foederati*, Halsall, *Migrations*, 153; Heather, *Fall*, 396. Wood, 'Magistri' strongly disputes that the Burgundians considered themselves a kingdom well into the sixth century (see below).

[253] On Theudebert's annexation of *Gallia Narbonensis* in 537, Scholz, *Die* Merowinger, 88; for the geopolitical situation, Heather, *Restoration*, 212f.; Procopius saw this as the 'end' of the Western Empire, Procopius, *Wars*, ed. and trans. H. Dewing, vols. 1–5 (London, 1914–28), 7.33.5; Ch.3.

[254] On the preceding Frankish annexations of Visigothic Kingdom of Toulouse (507) and Burgundy (524 and 535) G. Halsall, *Migrations* (2007), 491, 502.

sought from the emperor (i.e. as *rescripta*) or pope (decretals). Both emperors in Italy, especially Honorius (393-423) and Valentinian III (425-455) and local Gallic elites sought to empower Gallic provincial councils (both lay and clerical) and to give local bishops additional legal powers to root out heresy and protect vulnerable members of society, as part of a response to the political and social crises arising from fifth-century invasion and civil war. Political crises resulted in greater power to shape and implement ecclesiastical legislation being relocated to Gaul.[255]

2.B will focus upon the emergent 'successor kingdoms', those of the Visigoths, Burgundians, Ostrogoths and Franks, which began to emerge in the 460s and 470s. It will argue that the formation of these 'polities', whose rulers undoubtedly exercised a high degree of political authority over churchmen in their spheres, did not (necessarily) entail the creation of 'sovereign' legislative bodies capable of producing new ecclesiastical law from scratch. Whilst certain 'kings' (e.g. Alaric II) did reform imperial legislation pertaining to religion, others (e.g. Clovis) apparently opted to allow the ecclesiastical provincial council to continue as the primary mechanism for preserving and interpreting diverse genres of ecclesiastical law (both imperial and canonical).

Successor kingdoms were influential in shaping ecclesiastical law in the sense that they finalized Gaul's loss of access to imperial appellate courts and legislative mechanisms (i.e. the quaestor's office and pan-imperial ecumenical council); provided fresh energy, leadership and resources for Gallic provincial councils; and presented Gallic bishops with a range of new social and religious challenges (such as fresh investment in church institutions and the disruptive presence of influential 'Arians'), which provoked a legislative response; i.e. they helped generate demand for new law.

The following chapter (Three) will focus upon the impact these political and institutional changes had upon the content and application of 'canon law' during this period (405/6 – 537). It will argue that Gallic elites started to adapt canons for a range of new purposes. Whereas canons had been 'inward-

[255] Van Dam, *Leadership*, 11 outlines this process.

looking', clerical regulations, from roughly the middle of the fifth century onwards they were used to buttress or to re-state norms previously articulated in imperial law and to define broadly the clergy's position in society. Bishops started to legislate on 'new' subjects, such as 'incest', and to take a far greater interest in regulating the day-to-day behaviour of the laity. Furthermore, the use of canonical regulations became more systematic and forthright, and new arguments about the need for the strict enforcement of canonical discipline were articulated. This period saw striking quantities of conciliar legislation being generated, a proliferation of canon-law compilations, and the first ecclesiastical legislation to be issued by successor kings. In aggregate, these two chapters outline a process in which provincial Gallic ecclesiastical councils went from being fora for 'consuming' ecclesiastical law (i.e. receiving and *sometimes* adapting imperial and canonical norms, which were otherwise by-and-large authored at the imperial level), and instead emerged as authoritative 'producers' of ecclesiastical law for their local area, with much greater leeway to reshape imperial norms and canonical legislation and even to generate entirely new rules.

The argument outlined above does not fit neatly with the existing *Landeskirche* paradigm, since the latter has normally tended to view 'law' as a 'top-down' phenomenon and also to incorporate assumptions of legal positivism; namely, that the establishment of new 'polities' (i.e. successor kings allied with Gallo-Roman episcopates) entailed full 'sovereign' power to issue and shape legislation.[256] With these assumptions in place, debates focussed on the balance of power between 'Germanic' kings and the Catholic episcopate and, as a secondary issue, the extent to which the canonical legislation of each

[256] E.g. Schäferdiek, *Kirche*, 13 saw Visigothic king, Euric, as implementing a program to achieve full 'sovereignty' from the start. Although, admittedly, the paradigm does work reasonably well in the Visigothic example. The most influential (and potentially problematic) formulation was provided by Loening, *Geschichte* II, 129 onwards: Clovis instituted a national church, entirely subordinate to his royal authority with the pope effectively sidelined. Councils were no longer 'free' as they had been in the fifth century, they met at his command. This 'Church' persisted until the mid-seventh century (when it fragmented into episcopal republics in parallel with the 'collapse' of the state).

Landeskirche, produced in the 'royal' or 'national' councils of Agde 506, Orleans 511 and Epaon 517 (for the Visigothic, Frankish and Burgundian *Landeskirche* respectively), was merely a corollary of royal legislation, as opposed to possessing its own authority.[257] Often the *Landeskirchen* are talked about as if their parameters were agreed between kings and bishops and then consciously 'implemented' via the promulgation of ecclesiastical and secular laws.[258] Not only is the idea of 'a Church' deeply problematic for the assumptions it engenders about the level of institutional coherence, but furthermore, treating each *Landeskirche* as a discrete entity is problematic given the strong inter-regional continuities that persisted in 'canon law' from this period.[259]

This chapter aims to mitigate some of these obstacles by focussing upon legislation as the product of a dynamic and fundamentally demand-led process, rather than approaching it as the will of a political institution. In that sense it builds upon Jürgen Hannig's work, which traced the origins and meaning of the term of '*consensus'*, found in Frankish legislation in both the Merovingian and Carolingian eras and which was used to describe the relationship between Frankish kings and their aristocracies.[260] Although Hannig's focus was primarily upon the Carolingian period, he argued that the model of political authority instituted in most western successor states was derived from the pre-existing apparatus of Roman provincial government; namely, the *curia, civitatis* and

[257] Historians emphasizing the monarchies' roles in confirming or promoting canons: Hinschius, *Kirchenrecht*, 542-43; Ewig, *Merowinger*, 21ff.; Gaudemet, *Église et Cité*, 156; whereas Voigt, *Staat und Kirche*, 250ff. stressed the inherent authority of canonical legislation and downplayed the evidence that Merovingian kings confirmed the decisions of church councils.

[258] See, for example, Barion's characterization of Agde 506 in the Visigothic realm as a continuation of established tradition, conducted '*secundum statuta patrum'* and within the legally-prescribed powers of the primacy of Arles, the see of its convening bishop, Caesarius. Barion contrasted this with the first major council of the Frankish realm, Orleans 511, which he argued diverged from the established order by offering the Frankish king unrestrained influence over the Church. (*fränkische-deutsche Synodalrecht*, pp. 205 – 7).

[259] See ch.3.

[260] Hannig, *Consensus*.

concilia provincium; institutions which depended upon consent from local elites.[261]

Hannig sought to overturn the view that references to *consensus* in sixth-century legislation were the result of ancient 'Germanic' societal structures, in which nobles enjoyed quasi-democratic rights of *Mitspracherecht*.[262] However, despite making truly innovative observations about the role of the Gallic episcopate in the formulation of political authority and law in the successor kingdoms (largely by viewing law-making as a primarily communal activity aimed at consensus formation, rather than simply an assertion of authority and power by a king over his subjects), his primary focus was upon the relationship between kings and 'nobles' in later centuries, rather than the nature of 'canon law'. Hannig therefore stopped just short of challenging the existing paradigms on ecclesiastical law and law-making. He also followed Barion, Voigt etc. in talking about the institution of a *Reichskirche* after the Frankish conquest of Gaul and seems to have envisioned bishops ruling cities in conjunction with kings but with no influence from the nobility.[263]

Hannig highlighted church councils as one of the key provincial institutions to shape post-imperial political culture, in the sense that they encouraged successor kings to adopt the language of consensus, even as they also appropriated the conflicting rhetoric of absolute legislative authority found in imperial edicts. What Hannig essentially identified was that provincial bishops enjoyed much closer relationships with successor kings as legislators than had previously been the case under the imperial system. Bishops were able to request 'law' (in all its forms) with greater ease and, in certain kingdoms, bishops were acknowledged by the successor regimes to hold a prominent position in the legislative process.[264] These two chapters essentially adopt Hannig's observations about provincial councils providing the foundation for post-imperial rulership, but use the insight to illuminate the changing content

[261] Ibid., 42-64.
[262] Ibid., 51.
[263] Hannig had perhaps absorbed Heinzelmann's early work on *Bischofsherrschaft*, which he included in his bibliography but did not cite extensively.
[264] Ibid., 50-79.

and form of the resulting ecclesiastical legislation, rather than focussing exclusively upon the law's ideological legitimation.

2.A Imperial crises and ecclesiastical legislation

The fragmentation of the Western Empire in Gaul disrupted the Gallic episcopate's access to imperial legislative mechanisms and thereby encouraged provincial episcopal councils to become more active and independent as legislative organs. Bishops used their own conciliar *acta* to replicate functions performed by imperial legislation or papal decretals; i.e. to generate additional authority where a rule was contested or to adapt existing laws to new, real-world complexity. In the field of ecclesiastical legislation this process started to become apparent in legislation from the first half of the fifth century. It was not dependent upon presence of 'sovereign' successor kings. Furthermore, as institutional and political authority were gradually transferred from the imperial 'centre' to the Gallic 'periphery', episcopal office was strengthened and made more 'systemically important' thereby paving the way for a substantial overhaul of episcopal legal privileges in the post-imperial period.

In the first half of the fifth century, the process of balkanisation was conducted (for southern Gaul at least) via the official imperial legal channels.[265] That is to say, emperors and popes sanctioned a process of 'managed devolution', which encouraged autonomous Gallic conciliar activity and identified episcopal office as an essential component in the reconfiguration of local government. Ultimately, the weakness of the central imperial state led Gallic bishops under the leadership of Hilary of Arles to adopt and replicate key components of the 'devolution legislation' in their own conciliar *acta*.

There were three key periods of political disruption in Gaul during the first half of the fifth century; each one was followed by a legislative response

[265] Northern Gaul experienced considerable violence and administrative discontinuity. See J. Harries, 'Church and State in the Notitia Galliarum', *The Journal of Roman Studies*, 68 (1978), 26 – 43 at 30; Duchesne, *Fastes* III, 111ff.; Heather, *The Fall of the Roman Empire: a new history of Rome and the barbarians* (Oxford, 2005), 207.

intended to reorganise the authority structures of the Gallic episcopate and provincial government. The first round of legislation consisted of a series of measures taken by Constantius, the key general (and power behind the throne) to the western emperor Honorius (393 – 425), in the aftermath of Constantine III's usurpation (407 – 411) and the secondary-usurpations and conflicts with 'barbarian' groups that followed it.[266] The legislative response included Pope Zosimus' decretal of 417 and an edict of Honorius and Theodosius in 418.[267] The second round of legislation came in response to the suppression of Johannes' usurpation (423 – 425) and the re-establishment of an ultra-Nicene government under the infant Valentinian III (backed by Theodosius II in the eastern Empire) in 425. It took the form of an imperial edict directed to the praetorian prefect of Gaul, ordering him to support the bishop of Arles in rooting out heresy associated with the usurpation.[268] Finally, from the late 440s onwards, Pope Leo I and Emperor Valentinian III issued edicts trying to unpick the consolidation of power carried out in Gaul in the preceding decades by Lérinian alumnus, Hilary,

[266] Jovinus' Rhine usurpation was extinguished after Constantine III's. Heraclianus revolted in Africa then invaded Italy in 413. The Burgundians were settled at Worms in 413. The Goths took Narbonne, Toulouse and Bordeaux in 414 (possibly after losing their Roman grain subsidy supplied from Africa) but were driven into Spain in 415, where they subsequently fought with Constantius against the Vandals and Alans in 417/18. (Heather, *Fall*, 192-203).

[267] Zosimus, *Ep.* 1 '***Placuit apostolicae***', (JK 328) (PL xx. 642 – 5) prescribed that clerics from Gaul would only be accepted in Rome with *littera formata* from Patroclus (bishop of Arles), and recognised the bishop of Arles as metropolitan over the rival district of Viennensis and several other dioceses in the *Septem Provinciae* thereby depriving the bishops of Marseilles, Vienne and Narbonne of their metropolitan status. See, Dunn, 'Placuit apostolicae'; ***Ep. Arelatensis genuinae*. 8**, (Epistolae Merowingici et Karolini Aevi, ed. W. Gundlach, MGH, Epistolae 3. Berlin:
1892.), Honorius and Theodosius II to Agricola, Praetorian Prefect of Gaul ordering him to hold a council of the Seven Provinces at Arles and every year thereafter. N.B. also **Sirm.9** [CTh16.2.39; Brev. 16.1.5] (Pharr, 481), Arcadius and Honorius to the Praetorian Prefect, issued at Ravenna (November, 408), anyone who had been 'censure[d] by the priestly court', any cleric whom had been deposed from the clergy by his bishop, or any cleric who had voluntarily left the service of the Church, should immediately by vindicated to the municipal council or a guild and 'obligated to the performance of the compulsory public services for which he is suitable.' For each such person, the decurions were to pay two pounds of gold to the treasury in the event that were found to be colluding with clerics/ex-clerics to avoid the tax, and they would be barred from imperial service.

[268] Sirm.6 [CTh 16.2.47], (Pharr, 479).

bishop of Arles.[269] Hilary's councils represent the 'local' reaction to the reconfigurations of episcopal authority in Gaul sanctioned by Honorius and Valentinian III.

This legislation has, to date, been approached (almost exclusively) as evidence for the emergence of papal government, rather than as a precursor to post-imperial Gallic conciliar activity.[270] Pope Zosimus' decretal of 417 concentrated episcopal authority in the see of Arles. It gave Arles exclusive rights to issue letters of recommendation for Gallic clergy travelling beyond Gaul (*litterae formatae*, in effect a monopoly of access to the sources of imperial patronage and law); an undefined 'primacy' over the entire Gallic Church; and metropolitan rights over Viennensis and the two provinces of Narbonensis. This departed from the established tradition of diocesan structures mirroring those of the civil administration.[271] These measures accompanied the imposition of men loyal to the central imperial government in Arles and other key sees in southern Gaul.[272] The gerrymandering of metropolitan jurisdictional boundaries was likely intended to neutralise the institutional authority of the neighbouring metropolitan see of the Marseilles, whose bishop, Proculus, had been linked to Constantine's usurpation.[273]

While the precise allocation of agency in this first structural reorganisation of the Gallic episcopate has been much debated, Zosimus is generally interpreted as having been at least a 'willing participant' in what was essentially Constantius and Honorius' reconsolidation of power.[274] The measures of

[269] See below; *Ep. Arel.* Nos. 9 – 21 (AD 449 – 464) from Pope Leo to assorted Gallic bishops in years following Hilary of Arles death, a period of intensive communication between Rome and Gaul.
[270] E.g. W. Ullmann, *The Growth of Papal Government in the Middle Ages, a study in the ideological relation of clerical to lay power* (London, 1955), 9ff.; more recently, Dunn 'Placuit apostolicae'.
[271] Ch.1 on Nicaea 325, Turin c.400, later Chalcedon 451, c.17 (L'Huillier, *Church*, 251).
[272] E.g. Patroclus of Arles, see G. Dunn, 'Flavius Constantius and Affairs in Gaul between 411 and 417*', *Journal of the Australian Early Medieval Association* 14 (2014), pp. 1 - 21.; Jones, LRE, I, 212.
[273] Jones, *LRE*, I, 889.
[274] Mathisen characterised the legislation as Zosimus' policy and an assertion of papal legislative authority (Mathisen, *Factionalism*, 36f.), but also called Zosimus a 'willing participant' (Mathisen, *Factionalism*, 44 – 68); others have portrayed the

Zosimus' decretal aligned closely with those of Honorius' edict, which ordered the Gallic praetorian prefect to convene a *Concilium Septem Provinciae* (hereafter 'the Southern Council') and to hold it every year thereafter with attendees from the Gallic provinces south of the Loire.[275] The Southern Council consisted of an annual meeting of Gallic notables ('*iudices'* and '*honorati'*) under the leadership of the Praetorian Prefect in Gaul and potentially also included bishops. It met '*propter privatas ac publicas necessitates*'. Most view the Southern Council instituted in 418 as the creation of Constantius, and that it was instituted as part of an attempt to reconcile Gallic provincial elites to the settlement of Wallia's Goths.[276] The precise origins of the Southern Council are less important than the fact that greater autonomy for Gallic administrators was acknowledged in response to the political crises stemming from invasion.

Valentinian III's post-Johannes legislation in 425 implemented similar policies. It sought to ensure the loyalty of the southern Gallic episcopate as part of an attempt to restore order, and commanded the praetorian prefect in Gaul to assist the bishop of Arles in testing the orthodoxy of all Gallic bishops. Any

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reorganization as part of Constantius' broader attempt to consolidate power in Gaul. Points of debate include whether Patroclus was present in Rome for Zosimus' ordination (Duchesne, *Fastes*, I, 249-62); Dunn has recently placed greater emphasis upon Patroclus as the originator of the reorganization sanctioned by Zosimus (Dunn, 'Flavius Constantius and Affairs in Gaul between 411 and 417*', *Journal of the Australian Early Medieval Association* 14 (2014), 1 - 21.). Heinzelmann, 'Affair of Hilary': 'Above all, it is Constantius whom we must consider as having been behind the pope Zosimus' granting of unprecedented privileges to the see of Arles'. Much of this becomes redundant in view of the broader pattern of imperial fragmentation followed restorative legislation.

[275] MGH Ep. III (1892), Ep. Arel. 8 Honorius to Praetorian Prefect Agricola (17 April 418); The provinces were Alpes Maritimae, Viennensis, Narbonensis I and II, Aquitania I and II and Novempopulania; and Matthews, 1975, p. 334; C. Müller, 'Kurialen und Bischof, Bürger und Gemeinde – Untersuchungen zur Kontinuität von Ämtern, Funktionen und Formen der "Kommunikation" in der gallischen Stadt des 4. - 6. Jahrhunderts' Inaugural-Dissertation zur Erlangung der Doktorwürde der Philsophischen Fakultäten der Albert-Ludwigs-Universität zu Freiburg i. Br. (2002/3), 44 onwards; Mathisen, *Factionalism*, 44 – 68; Hunt, 'Church', 250.

[276] Heinzelmann, *Bischofsherrschaft*, 75; Matthews (followed by Guy Halsall) also takes this view; cf. R. Mathisen, 'The Council of Turin (398/399) and the Reorganization of Gaul ca. 395/406', in Journal of Late Antiquity vol. 6 no. 2 (2013), 264 – 307, suggests the Southern Council might have been instituted previously in either 402 or 408 and originally intended to facilitate the 15 year tax assessment.

found to be doctrinally untoward were to be expelled from Gaul.[277] The reason for this response, according to the edict, was that Johannes' administration had undone the legal privileges of episcopal office conferred by Honorius (and thereby rejected the Theodosian theocratic model of government) in favour of religious toleration.[278]

The specific issues addressed in Sirmondian Constitution 6 foreshadow what were to become the key episcopal legislative concerns under the successor kingdoms. Emperors Theodosius and Valentinian Caesar to Amatius, Praetorian Prefect of Gaul declared:

(Ecclesiastical *privilegium fori*:)

> 1) that clerical immunity from judicial proceedings as defined in 'the statutes of the ancient Emperors' was to be reinstated;[279]

(Active participation of Gallic bishops in the suppression of heresy:)

> 2) that 'divergent bishops' following 'false doctrine of the teaching of Pelagius and Caelestius [were to be] formally notified by Patroclus, Bishop of the sacrosanct law.' If they had not returned to the Catholic faith within 20 days, they were to be expelled from Gaul and replaced 'with a more loyal priesthood';[280]

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[277] Sirm. 6 (= CTh 16.2.47; 16.5.62 and 64) Emperors Theodosius and Valentinian Caesar to Amatius, Praetorian Prefect of Gaul (July/August 425) (Pharr, 479f.; Mommsen and Meyer, 911f.).

[278] '*Privilegia ecclesiarum omnium quae saeculo nostro tyrannus inviderat, prona devotione revocamus. ...*' (Mommsen & Meyer, 911).

[279] Previous note. N.B. The edict was not numbered. I have divided it into sections for clarity.

[280] '*DIversos vero episcopos nefarium Pelagiani et Caelestiani dogmatis errorem sequentes per Patroclum sacrosanctae legis antistitem praecipimus conveniri: quos quia confidimus emendari, nisi intra viginti dies ex conventionis tempore, intra quos deliberandi tribuimus facultatem, errata correxerint seseque catholicae fidei reddiderint, Gallicanis regionibus expelli adque in eorum loco sacerdotium fidelius subrigari, quatenus praesentis erroris macula de populorum animis tergeatur et futurae bonum disciplinae iustioris instituatur.*' (Mommsen & Meyer, 912); An extraordinary

3) that 'Manicheans and all other heretics, whether schismatics or astrologers, and every sect that is inimical to Catholics' were to be banished from the cities, in order that such cities might not be defiled by the contagion of the presence of such criminals.;[281]

(Protection of lower-status Christians from the patronage/ownership of non-orthodox persons:)

4) that Jews and pagans were to be denied the ability to plead cases, join the imperial service, own Christian slaves ('lest by the occasion offered by ownership they should change the sect of the venerable religion.');[282] and

5) that all persons 'of false doctrine' were to be 'banished, unless swift reform should come to their aid.'[283]

Valentinian's order thereby continued the pattern of imperial administrations in Italy sanctioning an unprecedented concentration of institutional authority and political power in the hands of the praetorian prefect and the bishop of Arles. Imperial governments responded to political instability by using the provincial government and the Gallic episcopate to buttress one another.

When imperial authority faltered for a third time, local Gallic factions started to pursue similar policies in order to consolidate power for themselves. Hilary of Arles' councils and canonical legislation represent centrifugal forces acting against the centralising efforts of Zosimus and Honorius in the 410s and

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level of power for an edict to sanction for a bishop, perhaps inspired by the anti-Donatist legislation of Honorius.

[281] '*...Manichaeos omnesque haereticos vel schismaticos sive mathematicos omnemque sectam catholicis inimicam...*' (ibid.).

[282] '*Iudaeis quoque vel paganis*...' (ibid.).

[283] '*Omnes igitur personas erroris infausti iubemus excludi, nisi his emendatio matura subvenerit.*' (ibid.).

Leo I and Valentinian III in the 440s.[284] They were held shortly after the suppression a major Visigothic revolt in Gaul, unrest which had allowed Genseric's Vandals to conquer Africa Proconsularis, thereby depriving the Western Empire of one of its wealthiest provinces.[285] The early 440s saw Valentinian's government facing sustained Vandal piracy in the western Mediterranean and a concentration of eastern and western imperial forces in Sicily for a planned invasion of North Africa.[286] Large parts of Gaul and Spain were ceded at this time, including Aquitania II and parts of Novempopulana to the Visigoths.[287] Even south-eastern Gaul, still nominally ruled from Italy, appears to have been left more or less to its own devices, since Hilary's church councils in southern Gaul (Riez 439, Orange 441 and Vaison 442) came towards the end a period of legislative silence from Italy.[288] (Conversely, it might be noted, that the two appeals launched by Gallic congregations to the bishop of Rome in the first half of the fifth century (requesting adjudication on contentious points of episcopal authority) correspond with the periods of political stability and unity with Rome).[289]

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[284] Mathisen, *Factionalism*, 145 assumed that popes reflexively sought to exercise institutional power over Gaul and that conflict between Arles and Rome '...probably was unavoidable': 'Hilary was attempting to secure Gallic ecclesiastical leadership for himself and his colleague at the same time that Leo himself was seeking extraordinary precedence for himself and the see of Rome.'; Duchesne, *Fastes* 1.114-19; Prinz, *Mönchtüm*, 51; Heinzelmann, *Bischofsherrschaft*, 80-83; Leclerq, *Conciles*, 2.446-478; Hunt, *Leo*, 39; Barion, *Synodalrecht*, 23 all saw a clear attempt by Hilary to regularize interprovincial councils.

[285] Halsall, *Migrations*, 245.

[286] Although, Wickham, *Framing*, 528 contests the idea that the 440s were a period of crisis in southern Gaul.

[287] Definitely by the late 430s a practically independent 'federate' Gothic Kingdom in Aquitania II and parts of Novempopulana emerged. It was acknowledged by treaty in 439. Gaul north of the Loire was once again under the control of independent groups. (Halsall *Migrations* 245f.).

[288] Honoré, *Law*, 251-60 identifies a legislative vacuum in the West c.426 – 438 and also notes that Valentinian III issued only a small number of laws in his later years (438 – 55); Weckwerth, *Ablauf*, 127 on Hilary's councils.

[289] Boniface to Hilary of Narbonne in 422, i.e. before the death of Constantius: no ordination to take place without the consent of the metropolitan; each province to have its own metropolitan; no metropolitan could have two provinces under him. (Boniface, *ep*. XII). Celestine to the bishops of Viennensis and Narbonensis 428, i.e. in the period after the subjugation of Johannes' usurpation. (Celestine, *ep*. IV).

Hilary's councils in many ways represent the first flourishing of the kind of innovative provincial legislative council which was to define Gallic ecclesiastical legal culture for the next 150 years. As will be discussed below, these councils started to do new things with their legislation, which became common in sixth-century Gaul. Hilary adopted the strategy of buttressing episcopal authority seen in Honorius' and Valentinian's 'devolution legislation', which suggests the impetus for active, autonomous ecclesiastical councils was partially a response to fifth-century political disruption, articulated as a concern about the influence of non-orthodox (i.e. heretical) factions. He consolidated his metropolitan power, which had rested implicitly on good connections to the pope and the underlying imperial administrative divisions, through a mixture of adjustments to conciliar procedure, disciplinary proceedings and enforced ordinations of his favoured candidates for episcopal office.

In a further foreshadowing of developments to come, Hilary's councils blurred the line between imperial and canonical legislation and paid close attention to existing canonical regulations in order to legitimise his attempts to consolidate power. The council of Riez 439 is particularly noteworthy for the detail with which it cited canonical regulations. The council was called to remedy the un-canonical ordination of one Armentarius as bishop of Embrun, a metropolitan see which Hilary had taken to treating as subordinate to Arles.[290] The council condemned the two bishops who conducted the ordination on the basis they had transgressed the canons of Turin and Nicaea.[291] The ordaining

[290] CCSL 148, *Concilia Galliae a. 314-506,* ed. C. Munier (1963), 61 – 75; **Riez 439**, c. 3 referred to **Nicaea** c. 8 as a pretext for deposing Armentarius, but then went against Nicaea's prohibition on episcopal transfer by allowing him to occupy a see outside the province with limited episcopal powers (he was only to be allowed to confirm the newly baptised).

[291] **Riez 439**, c. 1 (ibid.) The bishops who consecrated Armentarius shall not be excluded from communion but, in accordance with the decree of the synod of Turin, shall not for the rest of their life take part in an ordination or a council.
Riez 439, c. 3 (ibid.) because Nicaea treats schismatics more gently than heretics, Armentarius may be granted a church outside the province of Alpina Maritima so that he may be maintained (as a *chorepiscopi*), but he must never offer sacrifice in towns or discharge and episcopal function in the church granted to him. He may only confirm the newly baptised. Cf. **Nicaea 325**, c. 8 which ruled on how to handle clergy returning to the orthodox church from the *cathari* sect. In areas populated by *cathari* returning

bishops were prohibited from taking part in subsequent ordinations or councils for the rest of their lives, in accordance with the *acta* of Turin. Armentarius himself was to lose his see, but, if any bishop was willing, he was permitted to be allocated a church in another diocese at which he could be maintained as a '*chorepiscopus'*, or 'rural bishop'.[292] He would not be permitted to sacrifice in towns (unless supervised by a proper bishop) or to conduct ordinations or any other episcopal function. He could only confirm the newly baptised. This solution was explicitly modeled upon the eighth canon of Nicaea, which had prescribed similar measures for the return of schismatic clergy from the *cathari*.[293]

Hilary thus relied upon a close reading and citation of existing canonical norms. Unlike the papal delegates sent to Carthage in the *Causa Apiarii* a couple of decades earlier, he (or his staff) actually paid close attention to the contents of Nicaea in order to exercise his authority over the episcopate of southern Gaul in the absence of direct support from an emperor or pope. Riez' use of the Latin term '*chorepiscopus*', in particular, indicates a very close working knowledge of the original Greek text of the canons of Nicaea. This is the earliest instance of the original Greek term '*Χωρεπίσκοπος'*, being translated into Latin. Indeed the office appears not to have been commonly recognised in the Latin west before the eighth century. Dionysius Exiguus, for example, did not translated it at the turn of the sixth century.[294] It is possible, therefore, that one of Hilary's staff or direct correspondents had themselves translated the Nicene canons.

Amongst the new rules formulated at Riez, one restricted local bishops from entering a neighbouring city after its bishop had died, another prohibited any bishops to enter the city without the metropolitan's, i.e. Hilary's,

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clerics could retain their rank; however, in areas which already had an orthodox 'Catholic' bishop, returning schismatic clergy could either take the rank of priest, or be designated a *chorepiscopus* – 'rural bishop', 'This way he can remain an eminent clergyman, without there being two bishops.'

[292] Norton, *Elections*, 26-7; on '*chorepiscopi*' Hess, *Development*, 154.

[293] L'Huillier, *Church*, 56.

[294] Ibid., 214-15: Dionysius left out the term altogether; the author of the *Prisca* translated it as '*provincalem episcopum*'.

consent.[295] At another of Hilary's councils, Orange 441, the council affirmed that the legislation so far decreed was henceforth to remain valid.[296] It also reaffirmed the Nicene principle that two councils must be held every year. However, it then went on to add that each council should be arranged at the preceding synod and that Hilary would notify any bishops of the upcoming council who had not been present when it was planned, thereby giving him additional procedural mechanisms by which to coordinate the activity.[297] Hilary thus sought to consolidate his institutional authority over the southern Gallic episcopate by regularizing provincial church councils and echoing the efforts of Constantius and Agricola to institute a regular Southern Council.[298]

Riez and Hilary's later council at Vaison were also amongst the first Gallic councils to incorporate imperial legislation into their legislative *acta*. Vaison 442 c. 9 cited an edict of Honorius on the process for claiming a foundling child.[299] It refined the procedure outlined in Honorius' edict, (which had stated that the child's finder owned the minor) by requiring the finder to announce the find at church and to wait 10 days to make sure the original guardian did not claim them. Riez 439, c. 10 added a canonical penalty to anyone who subsequently challenged the finder's ownership of the child: the church would treat them as a murderer, i.e. excommunicate them.

The subsequent complaints levelled against Hilary (documented in papal and imperial decrees), confirm that he embraced the 'Theodosian' model of muscular church leadership promoted in the aforementioned 'devolution legislation'. The complaint came from Chelidonius, bishop of Besancon, a diocese beyond Hilary's formal jurisdiction as metropolitan of Arles. He had

[295] Riez 439, c. 6 In order to prevent un-canonical ordinations for the future, when a bishop dies, only the bishop of the nearest diocese is allowed into the bereaved city, in order to superintend the burial and guard against irregularities; c. 7 after seven days he must leave the city and must not reenter without the permission of the metropolitan.
[296] Orange 441, c.28(29) (CCSL 148, 85f.).
[297] Orange 441, c. 30 (ibid.).
[298] Barion, *Synodalrecht*, 23 highlighted Hilary's efforts. Cf. councils in the imperial era, which Weckwerth observes were generally *ad hoc*, *Ablauf*, 117f.
[299] Vaison 442, c. 9 a contraction of Carthage 419, c. 5, citing CTh 5.9.2 Honorius and Theodosius, (412,) anyone who finds a child must give notice in a church and only then after 10 days be able to take it away.(Pharr, 109f.; Mansi t.6p. 458).

travelled to Rome to appeal a sentence passed against him. We can surmise from the papal decretal and imperial rescript sent back to Gaul after the trial that Hilary deposed Chelidonius at a council on the grounds that past transgressions should have made him ineligible for clerical office. (These might have along the lines of the trial of Armentarius at Riez 439). A second Gallic bishop (whose see is unknown), Projectus, was also present in Rome, having complained that Hilary had transferred his diocese to someone else whilst he had been ill. While Leo and Valentinian's legal instruments undoubtedly preserve the case put against Hilary by his enemies, they give us a sense of his activities and suggest that the alterations his councils made to the regulations surrounding episcopal appointments were part of a wider attempt to consolidate power.[300] Leo's letter accused Hilary of:

- Falsely claiming the power to intervene in episcopal elections; (In addition to the complaints of Chelidonius and Projectus, Hilary was accused of intervening in the elections of outlying dioceses whilst accompanied by an armed escort ('*militaris manus*');
- Having come to Rome uninvited;
- Disputing the authority of the Holy See (with *verbis arrogantibus*).

In response, Leo:

- forbad bishops to cede voluntarily their prerogatives of ordination to anyone;

[300] Nov. Val. 17 (Pharr, 530); Leo Ep. X (on dispute), LXVI (on division of province); A parallel account from the *Vita Hilarii* (written shortly after Hilary's death by his pupil and relative, Honoratus of Marseilles) records that Chelidonius had faced two charges at the council. In addition to the claim that he had married a widow in contravention of the canons, the Gallic bishops had also considered the allegation that Chelidonius had handed down capital sentences whilst serving as a public official. The *Vita* records that, in the face of this 'novel charge' '*…tantae rei novitate permoti…*', several bishops from different areas were assembled and eventually decided to depose him on the grounds that 'he whom the rules of Scripture remove ought to remove himself by his own free will.' '*…, ut quem scriptuarum regulae removebant, voluntate propria se removere deberet.'*(S. Cavallin, ed. *Vitae Sanctorum Honorati Hilarii* episcoporum Arelatensium (Lund, 1952); cf. Norton, *Elections*, 157f.

- declared that if a bishop had to delegate these prerogatives, they ought to go to the longest serving bishop (and not to a patron);
- declared Hilary's sentence against Chelidonius had been reversed and the latter restored to office;
- declared the prerogative of Arles to intervene in the elections of Viennensis had been withdrawn;
- reiterated that episcopal elections required the endorsement of the clergy, the attestation of *honorati* and the agreement of the city council and population;
- declared that Hilary had forfeited his metropolitan rank, was forbidden from calling further councils and could no longer participate in episcopal courts.

Valentinian's corresponding *lex edictalis*, addressed to the praetorian prefect:[301]

- asserted that Leo's *sententia* would have been valid even without his imperial edict and that the pope had '*auctoritas in ecclesias*';[302]
- prohibited (again) the use of armed forces in church affairs;
- ordered provincial governors to convey recalcitrant bishops to the pope in Rome. (Failure of officials to comply was to be punished with a fine of 10lbs of gold).[303]

It thus appears from Leo and Valentinian's reaction that, when the balance of power lay with local elites in Gaul, Gallic bishops under Hilary's leadership had acted in conjunction with local secular forces of some description (possibly via the Southern Council),[304] and attempted to carry out the same organisational restructuring and consolidation of power that had been

[301] Nov. Val. 17 (445) (Pharr, 530f.).
[302] Hence the centrality of this law to histories of papal government.
[303] Hall, 'organization', 732.
[304] Heinzelmann, 'Affair of Hilary', argued these were most likely forces of the praetorian prefect.

sanctioned in papal decretals and imperial edicts in 417 and 425.[305] Hilary's faction had found it expedient to use a close reading of the canons of Nicaea in addition to arguments from scripture to enforce their disciplinary standards. Even before the rise of successor kingdoms therefore, the growing will for provincial political autonomy seems to have been expressed via moves to strengthen local church councils and to do so in part via canonical legislation.

Both Hilary's conciliar legislation and Sirmondian Constitution 6 extended the legal privileges of the clergy, particularly those which enabled them to protect low-status Christians from non-Christian or schismatic owners or oppressors. Orange 441, c. 5 (the first Gallic council to regulate asylum) prescribed anathema for masters who sought to reclaim servants who claimed asylum.[306] This echoed anti-Donatist legislation from North Africa, (where lawmakers promoted church asylum as a mechanism for undercutting the influence and material wealth of non-orthodox communities)[307] and Sirmondian 6, whose affirmation of ecclesiastical asylum was explicitly intended to curb the influence of Jews and pagans to influence the religion of their slaves.[308] Likewise, Orange 441, c. 6(7) prescribed anathema for masters who violated *manumissio* made *in ecclesia*.[309] As we shall see in the next chapter, these same

[305] It has been suggested that Hilary used his usurped authority to create new bishoprics: S. T. Loseby, 'Bishops and cathedrals: order and diversity in the fifth-century urban landscape of southern Gaul', in J. Drinkwater & H. Elton (eds.), *Fifth Century Gaul: a crisis of identity?,* (Cambridge, 1992), 144 – 156 at 147.

[306] '*Eos qui ad ecclesiam confugerint tradi non oportere, sed loci reverentia et intercessione defendi. (6). Si quis autem mancipia clericorum pro suis mancipiis ad ecclesiam confugientibus crediderit occupanda, per omnes ecclesias districtissima damnatione feriatur*.' (CCSL 148, 79); See in particular S. Esders *Die Formierung der Zensualität. Zur kirchlichen Transformation des spätrömischen Patronatswesen im früheren Mittelalter* (Ostfildern, 2010), 40f. traces the growth of ecclesiastical legal patronage. This specific theme is discussed in greater detail in Chapter Five.

[307] In addition to the ban on heretics owning (orthodox) Christian slaves, legislators took steps to protect asylum as the mechanism by which orthodox slaves could throw of their unlawful servitude: CTh 16.6.4.2 (12th Feb 405).

[308] Sirm. 6.5 above.

[309] '*In ecclesia manumissos, vel per testamentum ecclesiae commendatos si quis in servitutem vel obsequium ad colonariam conditionem imprimere tentaverit, animadversione ecclesiastica coercebitur.*' (CCSL 148, 79).

subjects continued to dominate Gallic councils and canon-law compilations into the sixth century.

In addressing these subjects, Hilary presided over the start of a tangible shift in the 'function' of Gallic ecclesiastical canons. His canons were no longer concerned solely with internal clerical discipline, ecclesiastical hierarchy and points of ritual, and started undertaking the broader projects of defining the episcopate's own role and powers in relation to wider society and furthermore of promoting the *utilitas populi*, or 'public good'.[310] Essentially, Gallic church councils started to enter into areas which previously had been more or less the preserve of imperial legislation.

Hilary's councils constituted a style of early organic legislative activity in Gaul, iterations of which resurfaced in the successor states of the sixth century and ought to be seen, at least partly, as an attempt to mitigate the loss of direct access to emperor and pope by which Gallic ecclesiastical and secular elites had previously secured their social, economic and institutional privileges. We know about Hilary's actions largely from the eventual reassertion of 'central' authority in the form of his condemnation by Leo and Valentinian. There were further 'reassertions' of central authority: between Valentinian's death in 455 and 468, the date of the last post-Theodosian *novellae* issued by a western emperor, new laws reasserting 'central' authority continued to be issued over the increasingly chaotic and rapidly shrinking empire.[311] After the failure of the Gallic-backed emperor Avitus (455-56) and the halfway-competent Majorian (457 – 461), there was little meaningful government shared between Italy and Gaul, and from 464 until 494 there also appears to have been something of a cessation of communications between the sees of Arles and Rome.[312]

[310] Ullmann, 'Public Welfare', identified this concern with promoting public welfare as a novel characteristic of Gallic conciliar legislation post c. 500 but not before.
[311] Halsall, *Migrations*, 257 – 283.
[312] Mathisen, Second Council of Arles, 544f. Reference to the loss of contact was made in a letter from Pope Gelasius to Aeonius, bishop of Arles.

2.B Successor kingdoms and canon law

The formation of successor 'kingdoms' is relatively unproblematic to trace in political or territorial terms, in the sense of noting when the Visigoths, Burgundians, Ostrogoths and Franks started to act independently of the 'rump' imperial state rather than as (semi-)cooperative *foederati*.[313] However, the nature of political authority and the fiscal or economic settlements reached between the composite, 'barbarian' groups and Gallo-Roman populations are harder to pin down.[314] Likewise, the impact of the successor kingdoms upon the nature, content, form and application of canon law in Gaul was not

[313] For narratives of successor kingdom formation see, Scholz, *Merowinger*, 30-34; R. Van Dam, 'Merovingian Gaul and the Frankish conquests', in P. Fouracre ed., The New Cambridge Medieval History, 193-231 (Cambridge 2008), 193-231; Halsall, 'Invasions', 50 onwards; Ewig, *Merowinger*, 14-31; E. A. Thompson, 'The settlement of the barbarians in southern Gaul', JRS (1956), 46: 65–75; repr. in Thompson *Romans and Barbarians: The Decline of the Western Empire*, (1982), 23–37. Also, I. Wood, 'The Burgundians and Byzantium', in A. Fischer and I. Wood eds. Western Perspectives on the Mediterranean. Cultural Transfer in Late Antiquity and the Early Middle Ages, 400 - 800 AD (London, 2014), 1 – 17; ibid. 'Gibichung', 11 – 22.

Narrative sources (for the most part) attest to the gradual cessation of regions within Gaul to 'barbarian' groups as *foederati*, semi independent from the rump imperial state, during the fifth century. The Visigoths, Burgundians and Franks in the North East can be seen acting with relative independence of the Western Empire from roughly the 460s and 470s onwards. Key turning points are outlined below. N.B. The title used by leaders of the composite peoples, Franks, Visigoths and Burgundians etc., whether *rex* or some imperial titles such as *comes*, are not conclusive indicators of the political/institutional structures, since some had deployed 'proto-kingships' for centuries (P. Wormald, 'Kings and Kingship', Ch.21 in P. Fouracre ed. NCMH (Cambridge, 2008), 571-604).

[314] Extensive debates over levels of migration: P. Heather, *Empires and Barbarians: the fall of Rome and the Birth of Europe* (Oxford, 2010); and ethnicity: For an overview of the historiography on the latter, P. Heather, *The Goths*, 3-7; Halsall, *Migrations*, 35-63 and ch.13; G. Halsall, 'Ethnicity and early medieval cemeteries', J. Quirós Castillo ed. *Archaeology and Ethnicity. Reassessing the "Visigothic necropleis" Arqueología y Territorio Medieval* 18 (2011), 15-27; P. Geary, *The Myth of Nations: the Medieval Origins of Europe* (Princeton, NJ, 2002); P. Heather, 'Ethnicity, Group Identity and Social Status in the Migration Period,' in I. Garipzanov, P. Geary and P. Urbanczyk eds., *Franks, Northmen and Slavs, Identities and State Formation in Early Medieval Europe* Vol. 5, (Turnhout Brepols, 2008), 17-51; Whether taxes or lands were distributed amongst the new elites: W. Goffart, *Barbarians and Romans A.D. 418 – 584: The Techniques of Accommodation* (Princeton NJ, 1980) argued the incoming groups were afforded tax revenues. Cf I. Wood, 'Ethnicity and the ethnogenesis of the Burgundians', in W. Pohl and H. Wolfram eds. *Typen der Ethnogenese unter besonderer Berucksichtigung der Bayern* (Vienna, 1990), 53-69; also Ubl, *Inzestverbot*, 112-14.

straightforward. As we shall see, the successor kings' attitudes to the ideology, law and institutions of the Empire varied considerably.

In terms of the development of canon law in Gaul, the significance of the formation of 'successor states' was threefold. Firstly, the new kings provided fresh authority and energy for the legislative and judicial functions of provincial councils. Secondly, the formation of new political borders confirmed the effects of 'fragmentation' already underway c.405 – c.460s. That is to say, they altered the mechanisms for producing and interpreting 'law', in addition to disrupting existing episcopal hierarchies and thereby creating the need for new canons on ecclesiastical organization. Finally, the kingdoms created new 'conditions' (defined below, e.g. the presence of Arian churches and leadership), which required alterations to the existing legislation.

Royal leadership

The first major impact that the formation of successor kingdoms had upon canon law was to inject new energy, resources and authority into the 'organic' conciliar activity, which had intermittently flourished earlier in the fifth century (as with Hilary of Arles above). This occurred because each successor king sought to legitimise his rule by fulfilling key functions and appropriating symbolic acts performed by Roman Emperors.[315] These included relatively straightforward rituals, such as the *adventus* ceremony upon entering a city,[316] and, more significantly, issuing legislation and **'**chairing' church councils in a manner akin to Constantine's role at Nicaea.[317]

[315] Wormald, 'Lex Scripta' built upon Wallace-Hadrill's observations on the ideological potency of legislation J.M. Wallace-Hadrill, *The Long-Haired Kings* (London, 1962), 179-181; also *Ibid*. *Early Germanic kingship in England and on the Continent* (Oxford, 1971), 37, 43-4; J. Fannig 'Clovis Augustus and Merovingian *imitatio imperii*', in Mitchell and Wood eds. *The World of Gregory of Tours* (Leiden, 2002), 321–35; W. Daly, 'Clovis: How Barbarian, How Pagan?', *Speculum*, vol. 69, no. 3, (1994), pp. 619-64; Hannig *Consensus* as above.

[316] S. MacCormack,'Change and continuity in Late Antiquity: the Ceremony of the *Adventus*,' in *Historia* 21, (1972), pp.721 - 52.

[317] Hannig, *Consensus*, 62 in the Frankish realm, the kings alone called the councils from their *iussio*; also Barion, *Synodalrecht*, 250f.; e.g. pref. Orleans 549; cf. Cubitt, *Councils*,

In each 'successor kingdom' 'national' church councils were convened to coincide with key political or legislative events.[318] For example, Agde 506 was held sixth months after Alaric II (r.484-507) ordered the promulgation of his Breviary (see below) and at a time of acute political crisis as the King attempted to strengthen relations with his Gallo-Roman subjects in the face of escalating Frankish aggression from the North.[319] Orleans 511 was held in the wake of Clovis' successful conquest of Aquitaine and laid the foundations for his relationship with the southern Gallic churches.[320] Epaon in 517 was held shortly after the accession of the first Catholic Burgundian king, Sigismund, in 516. It too was held within roughly six months of the point at which the most influential collection of Burgundian law, the *Liber Constitutionum*, was organized into the form that survives today.[321] Additionally, the subscription lists preserved below the canons of each council reveal that they were kingdom-wide events.

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6 Councils can be divided into those called upon the authority of archbishops alone and those summoned under royal authority.

[318] See introduction; also Loening, II, as above and 138-43 on 'national synods' vs. 'conciliar mixta' of the Carolingian era.

[319] Schäferdiek, *Kirche*, 47; R. Collins, *Visigothic Spain, 409 - 711* (Oxford, 2004); P. King, *Law and Society in the Visigothic Kingdom* (Cambridge, 1972).

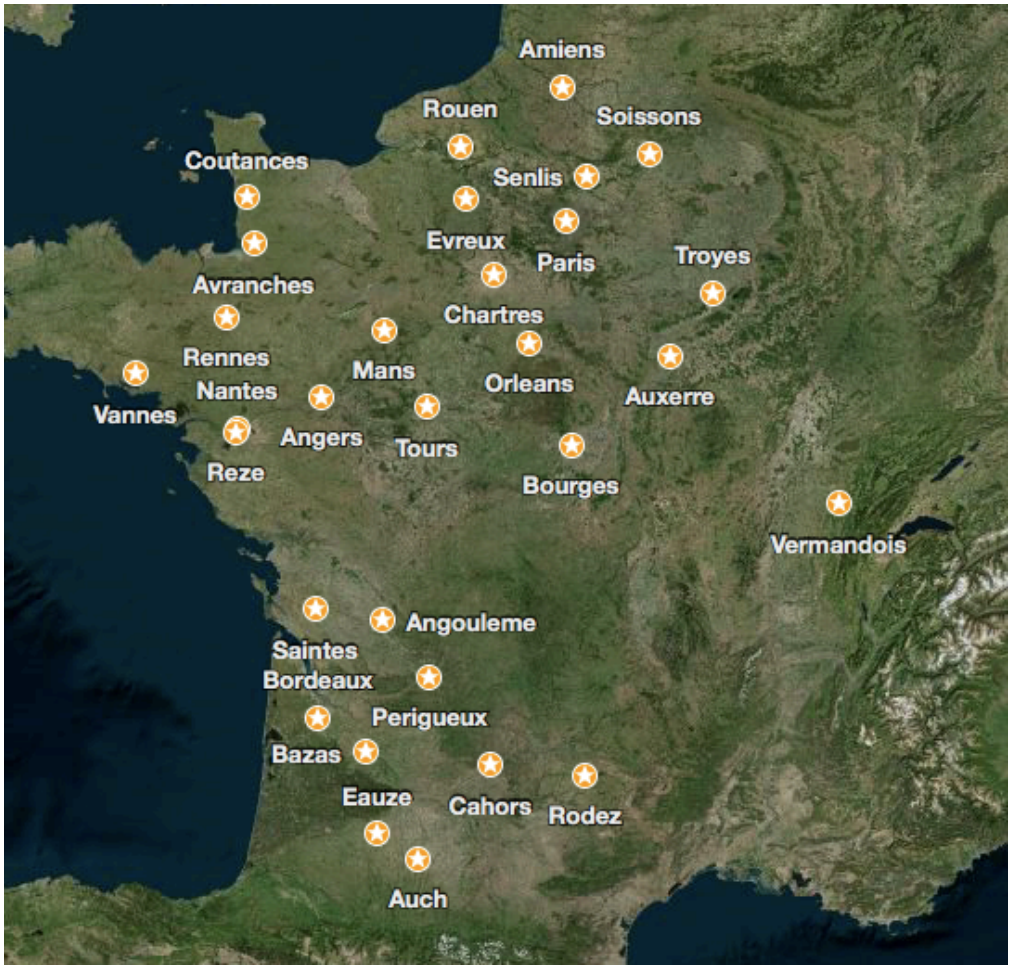
[320] Scholz, *Merowinger*, 61-68, 106-117.

[321] On the composition of the *Liber Constitutionum*, see below.

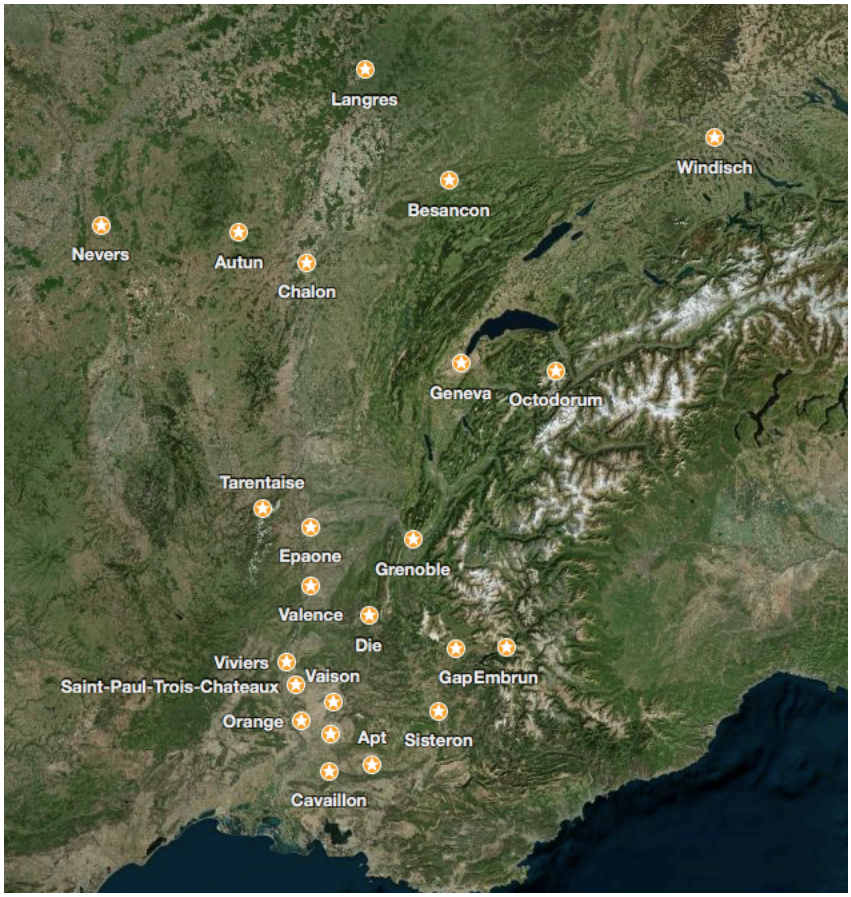
Agde 506 Attendance[322]

[322] Appendix 3: Conciliar Subscriptions.

Orleans 511 Attendance



Epaon 517


Langres
Windisch
Besancon
Nevers
Autun
Chalon
Geneva
Octodorum
Tarentaise
Epaone
Grenoble
Valence
Die
Viviers
Vaison
Saint-Paul-Trois-Chateaux
Gap
Embrun
Orange
Apt
Sisteron
Cavaillon

The prologues to the Visigothic and Frankish councils acknowledged degrees of royal oversight or leadership, and royal involvement appears to have been common in the sixth century, particularly for larger, pan-Gallic councils.[323] Agde 506 met '*cum permissu*' of Alaric II; the canons of Orleans 511 were actually addressed *to* Clovis and recorded that he had ordered the council to convene.[324] Likewise, councils held by Clovis' successors exhibited a similar deference. Clermont 535 met '...*consentiente domno nostro gloriosissimo piissimove regi Theudebertho*...'[325] The relationship between successor kings and church councils was in this sense akin to that between emperors and their ecumenical councils.[326] Although, in the Burgundian realm, the Gibichung dynasty were not acknowledged at Epaon, despite the fact that the council almost certainly coincided with the accession of Sigismund, the first Catholic Burgundian king, and the promulgation of the definitive version of the *Liber Constitutionum*.[327]

Clovis' strategy of accommodation with the Catholic Gallo-Roman episcopate south of the Loire seems to have been formulated in part by a desire to compete with the innovative strategies to appeal to Catholic, Gallo-Roman subjects employed by his southern rivals Alaric and Sigismund. In his letter to the bishops of Gaul shortly after his invasion of the Visigothic kingdom south of the Loire, Clovis made specific concessions designed to appeal to the institutional obligations of the Gallo-Roman bishops.[328] He notified them that he had commanded his troops, out of respect '*de ministerio ecclesiarum*', that the consecrated virgins and widows in the service of the Lord would be protected; so too would '*servis ecclesiarum*'. Clovis promised his forces would immediately

[323] Halfond, *Archaeology*, 57-60 counts 16 councils attributing some role to a *princeps* in their acts in Gaul 511 – 768; Chapter Five.
[324] '*...sacerdotes, quos ad concilium venire iussistis.*' (MGH, concil. I, 2); on Clovis as the new Constantine, Pontal, *Synoden*, 226.
[325] MGH, concil. I, 66.
[326] Weckwerth *Ablauf*, 147.
[327] Shanzer and Wood, *Avitus*, 2.
[328] *Chlodowici regis ad episcopos epistola* (507 – 511), ed. A. Boretius (1883), MGH Capit 1:1 – 2A.; Daly, 'Clovis'; de Clercq, *législation*, 8; Wallace-Hadrill, *Long-Haired Kings*, 178; Wood, 'Gregory', 264&270.

honour 'apostolic letters' ('*apostolia'*) issued by bishops requesting the return of seized property. Likewise, bishops could use their seal rings to free clerics or laymen seized in the chaos. Clovis thus offered mechanisms to ameliorate the effects of the Frankish advance that were tailored to the official responsibilities and functions of bishops and their churches, i.e. protecting the clergy, the poor and their tenants.

Kings also actively 'managed' the clergy in their spheres by vetoing candidates for ecclesiastical/episcopal office and exiling bishops who refused to cooperate with their regimes. Sidonius mentions several sees lying empty because of Euric, suggesting the Visigothic King had some ability to obstruct appointments.[329] Sidonius also made a fleeting reference to an 'Arian faction' failing to object to his choice of candidate for the episcopal election he oversaw at Bourges.[330] Whilst under Visigothic rule, Caesarius of Arles was temporarily exiled to Bordeaux by Euric's successor Alaric II.[331] In the Merovingian sphere too, kings were able to broker appointments to episcopal office.[332] This royal

[329] Sidonius, Ep. VII, Bordeaux, Périgueux, Rodez, Limoges, Mende, Eauze, Bazas St. Bertrand-de-Comminges; Schäferdiek, *Kirche*, 19 argues Euric neglected the Catholic churches rather than actively suppressing them.

[330] Harries, *Sidonius*, 233; Norton, *Elections*, 178-80; J. van Waarden, 'Episcopal Self-Presentation: Sidonius Apollinaris and the Episcopal Election in Bourges AD 470', in J. Leemans, P. Van Nuffelen, S. Keough and C. Nicolaye eds. *Episcopal Elections in Late Antiquity* (Berlin / Boston, 2011), pp. 555 - 563. Ep. VII Sidonius' oration to the citizens of Bourges (which he then attached in his letter to Perpetuus) mentions that even the Arian faction within the city chose not to speak out against his favoured candidate. (p. 334f.) This one tangential reference has been variously interpreted, but to my mind suggests that the Arian faction in the city (perhaps a royal official or military leaders and surely not much more than a minority) perhaps had a quasi-formal right to veto or obstruct an undesirable candidate (rather than implying that there was a chance an Arian could be appointed to the Catholic episcopate). This would fit with the wider picture of Arian kings intermittently exiling Catholic bishops they considered threatening (see above) and Sidonius' earlier attribution of empty sees to the hostility of Euric.

[331] *Vita Caesarii* 1.21 (ed. Klingshirn, 19); Schäferdiek, *Kirche*, 38.

[332] For an overview of the role played by kings in episcopal elections in late fifth century and Merovingian Gaul see esp. B. Dumézil, 'La royauté mérovingienne et les élections épiscopales au VIe siècle', in J. Leemans, P. van Nuffelen, S. Keough and C. Nicolaye eds. *Episcopal Elections in Late Antiquity* (Berlin/Boston, 2011), 127 – 143. He counts 26 instances of royalty appointing clerics as bishops in the works of Gregory of Tours, Venantius Fortunatus and Fredegar (p.134, n. 35); 11 instances of senior royal servants being appointed. Interestingly very few and only minor members of the Merovingian dynasty were ordained. He concludes that royal influence in episcopal elections was

right to veto both clerical and episcopal appointments had been agreed in the *acta* of Orleans 511.[333] Some influence seems to have been exercised: Remigius of Reims was criticised by three of his colleagues for ordaining a cleric on Clovis' suggestion (who went on to commit various sins).[334]

However, the implications of this influence over appointments should not be overstated.[335] Subsequent councils of the Merovingian kingdom reiterated a raft of minimum qualifications for episcopal and metropolitan candidates;[336] the quantity of obviously 'royal appointments' was quite limited at the start of the century; and it took several decades for Merovingian kings to integrate episcopal office fully into their monarchical power.[337]

Merovingian monarchical legitimacy, in particular, came to rest upon Nicene Christianity and more specifically a 'theology of government', which defined kingship as a form of ministry to be conducted in council with the bishops. Hannig identified this ideological convergence of monarchical and episcopal authority as developing gradually between the fifth and ninth

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the norm under the Merovingians but that the episcopate and Merovingian dynasty supported each other (rather than the former dominating the latter outright).

[333] Orleans 511, c.4 (MGH, concil. I, 4).

[334] Ep. Austras., 3, (MGH, Epistulae III, 114).

[335] P. Norton, *Episcopal Elections 250 - 600: Hierarchy and Popular Will in Late Antiquity* (Oxford, 2007), 161 asserts bishops were 'completely subservient' to Merovingian kings; whereas S. Loftus, 'Episcopal Elections in Gaul: The Normative View of the Concilia Galliae versus the Narrative Accounts', in J. Leemans, P. Van Nuffelen, S. Keough and C. Nicolaye eds. *Episcopal Elections in Late Antiquity* (Berlin / Boston, 2011), 423 – 436 takes a more skeptical view; as does Wickham, *Framing*, 173, who notes that most appointments went to local notables; Pontal, *Synoden*, 119 claims that kings controlled episcopal elections from the division of 567 onwards; S. Wood, *Proprietary Church*, 292 asserts Merovingians controlled episcopal appointments.

[336] E.g. Orleans 533, c.7 metropolitan to be elected by suffragans, bishops chosen from the clergy. Norton, *Elections*, 161 noted Gallic conciliar legislation largely stressed the power of the metropolitan in elections, but asserts nonetheless that kings were in total control by the sixth century; Loftus, 'Elections' concluded 'There is sufficient divergent evidence in relation to "election" to indicate regal intervention was not as common as scholarship has assumed and that bishops strove to conform to traditional procedure.'

[337] Chapters four and five. Gaudemet's students, Champagne and Szramkiewicz, 'Recherches Sur Les Conciles Des Temps Mérovingiens', *Revue historique de droit français et étranger* vol. 49 no. 1 (January - March, 1971), 25f. found that 9% of clerical attendees at Orleans 511 had 'Frankish' names (i.e. 3 attendees), only 3% at Orleans 533 (i.e. one attendee), rising to 20% at Orleans 549 and 65% at Paris 614, perhaps suggesting a gradual increase in royal influence over appointments. However, it is not clear what relationship, if any names had to 'ethnicity'.

centuries, yet it was also articulated in so-called *Fürstenspiegeln*, letters encouraging rulers to rule according to Christian values and episcopal counsel, which Gallo-Roman bishops offered to Merovingian kings from at least the end of the fifth century onwards.[338] Venantius Fortunatus' panegyrics likewise portrayed Chilperic and his dynasty as the 'apex of the catholic faith', casting him as a Roman and biblical ruler.[339] There was also widespread royal patronage of churches and monasteries.[340]

Merovingian kings therefore had an ideological incentive to sponsor church councils and to facilitate the creation of new ecclesiastical legislation. This starting point is essential for understanding why a) there were so many councils in sixth-century Gaul, and b) why Merovingian kings were prepared to acknowledge relatively expansive legislative and judicial functions of the Gallic episcopate. However, the ideological compact is not sufficient to explain the frequency of conciliar activity or the changing nature of the legislation that such councils produced.

The ability to convene councils and exercise leverage over episcopal appointments did not equate to a full 'sovereign' authority to reshape ecclesiastical law as kings chose. As we have seen, Gallic conciliar activity (both lay and ecclesiastical) predated the formation of the kingdoms. Furthermore, councils often met with no evidence of royal involvement and, as we shall see in

[338] Daly, 'Clovis', 631; e.g. Remigius of Reims to Clovis in 486 after he came to power in Belgica Secunda (*Ep. Austrasicae*, 2). In addition to appointing honest advisors and providing justice, Remigius exhorted Clovis '*Et beneficium tuum castum et honestum esse debet, et sacerdotibus tuis debebis deferre et ad eorum consilia semper recurre; quodsi tibi bene cum illis convenerit, provincia tua melius potest constare.*'; Aurelianus of Arles to Theudebert I mid-sixth century (*Ep. Austrasicae*, 10) contained similar advice; also Unknown bishop to unknown king, (*epistolae aevi merowingici collectae* 15) also stressed listening to the counsel of priests and assisting the poor.

[339] Halfond, 'Sis quoque', 53, citing Fortunatus' *Carmina* 9.1.144, and arguing convincingly against Heinzelmann (*Gregory*, 183, n.93)'s conclusion that Chilperic avoided co-opting bishops as partners. Also, Carmen II.10 copied poem on church in Paris depicting Childebert I as Melchisadek (Wood, 'Gibichung', 20). Hauck, *Kirchengeschichte*, 151f. also notes Orleans 549's address to the King (MGH, concil. I, 437) – cf. LH 9.21.

[340] Prinz, *Mönchtum*, 152-63; See below.

the next chapter, there is evidence that Gallic bishops by the end of the sixth century became adept at coordinating collective actions against kings.[341]

Indeed, it is worth noting that different kings engaged with episcopal councils to varying degrees. The Visigothic king, Euric, was ambivalent or perhaps even actively hostile, and no legislative councils are attested from his reign.[342] His successor, Alaric II, seems to have permitted autonomous episcopal councils at first, before actively seeking to engage both lay and clerical elites in his project to overhaul Roman Law and organize a major legislative council at Agde in 506.[343] The Burgundian king, Gundobad (473 - 516), an Arian, called the Catholic bishops of his realm to a council at Lyon in 500 where he queried their theology and probed the extent of their connections with the Frankish realm.[344] However, the earliest conciliar legislation to survive from the Burgundian realm comes from Epaon 517.[345] In Ostrogothic Provence, Caesarius of Arles eventually convened a series of councils with close cooperation from royal officials; however, the first council was not held until 524. Kings Odoacer and Theoderic in Italy forged a close working relationship with Senate and Pope. Theoderic seems to have allowed Italian bishops and elite families to continue to function as normal, as long as they acclaimed his royal authority, and he

[341] Halfond, *Archaeology*, 59, n.6 lists 22 councils with 'no evidence' of royal involvement: Lyon 516, Epaon 517, Lyons 518/19, Arles 524, Carpentras 527, Valence 528, Orange 529, Vaison 529, Marseilles 533, Eauze 551, Brittany c.552, Arles 554, Paris 556/73, Saintes c.558/61, Saintes 561/67, Saintes 579, Lyons 583, Auvergne 584/91, Auxerre 585/605, Sorcy 589, Auvergne 590, Unknown 614. However, it should be acknowledged that most of these were smaller, provincial councils. Many were also held in Burgundian and Ostrogothic Gaul, with the former potentially opting to remain as a sub-imperial territory (see below) and the latter monarch obviously based in Italy. Note, Vaison 529 was also attended by Theoderic's praetorian prefect, Liberius (the only Gallic councils to record attendance of secular officials in its *acta* and subscriptions).

[342] Although Faustus of Riez' *De Gratia* mentions two councils concerned with doctrine in 470. (CCSL 148, 159f.).

[343] See below.

[344] LH 2.4 (Krusch/Levison, 81f.); Avitus of Vienne and several other bishops were summoned to the royal palace in order to swear loyalty to the King. See also, S. Esders, 'Rechtsdenken und Traditionsbewusstsein in der gallischen Kirche zwischen Spätantike und Frühmittelalter. Zur Anwendbarkeit soziologischer Rechtsbegriffe am Beispiel des kirchlichen Asylrechts im 6. Jahrhundert' in *Francia* 20/1 (1993) pp. 97 - 125.

[345] See below.

seems to have intervened relatively even-handedly in papal election disputes.[346] One important variable to effect whether or how kings interacted with episcopal councils was their doctrinal identity (whether Arian or Catholic), which we shall explore more fully below.

Kingdoms confirm fragmentation

Successor kingdoms severely disrupted access to the central appellate authorities (or in 476 removed them entirely), which had acted as central nodes for the circulation of ecclesiastical law, and thereby made it possible for local bishops to disregard, subvert or reinterpret existing legal and canonical norms without fear of facing a challenge from local opponents in the form of an appeal to an external 'imperial' authority. To state the obvious, new imperial legislation could not be solicited from the quaestor's office by elites in politically autonomous regions. Given the myriad ways in which imperial legislation and judicial mechanisms regulated lay involvement with churches and clerics and underwrote key clerical privileges, particularly when local clerics required assistance in the face of new complexity, these were not inconsiderable losses.

Furthermore, the successor kingdoms also appear to have made impossible the holding of interregional councils spanning the new political borders. The attendance of virtually every council held in Gaul after the 460s conformed with the known spheres of influence of post-Roman kings.[347] The

[346] At Rome 499 churchmen acclaimed Theoderic before the council, and Theoderic moderated the Laurentian schism even-handedly; (Heather, *Restoration*, 59); Theoderic accepted a petition from bishop Epiphanius of Milan to continue Roman law and to permit Roman elite (including churchmen) to pass on their property. (ibid., 63).

[347] On the tendency for Gallic councils to conform with the borders of kingdoms, Pontal, Synoden, 229; Weckwerth, *Ablauf*, 118. A significant caveat here is that conciliar attendance is often used to determine shifting spheres of influence. Nevertheless, narrative and epistolary sources also provide corroborative evidence. The study of Gaudemet's colleagues, Champagne and Szramkiewicz, 'Recherches', remains the most comprehensive analysis of Merovingian conciliar attendance. For specific examples of political borders determining conciliar attendance see below re councils of Epaon 517 and Valence 528/9; –the shifting border between the Burgundian and Ostrogothic kingdoms provides the most fruitful evidence. Wallace-Hadrill, *Church*, 98 highlights the exception of bishop of Vienne attending Frankish council of Orleans 533. However the Franks annexed the kingdom shortly thereafter.

primary exceptions to this rule were the joint councils held by Merovingian kings at Orleans.[348] The reason for this pattern appears to have been that bishops and their trans-regional networks were frequently viewed with some suspicion by successor kings. Since kingdom borders were still relatively fluid, successor kings were highly suspicious of sympathies held for a neighbouring regime on the part of a bishop (whose office gave him connections across Gaul). There are numerous reports of bishops being imprisoned or exiled on suspicion of colluding with a 'foreign' power.[349] The new political borders therefore removed two of the standard mechanisms by which local bishops (or interested lay parties) obtained an authoritative interpretation on a point of church order, a legal instrument from the quaestor's office the consensus of an ecumenical council, leaving the provincial council as the key mechanism for establishing new ecclesiastical norms.

The formation of successor kingdoms also presented opportunities for bishops to perform greater leadership roles, which led indirectly to their conciliar *acta* broaching a number of new legislative topics. Successor kings actively courted Gallo-Roman episcopates and used their councils as important fora through which to negotiate the terms of accommodation between the new regimes and the subject populations.[350] The effect of this process was that the episcopate were ultimately able to claim an elevated the position of influence within each kingdom. Kings appealed to bishops for a number of reasons: they represented a constituency well-placed within Gallo-Roman society and subject to an 'official' duty to circumvent conflict. Furthermore, they had considerable wealth to lose if things went wrong and a track-record of helping to negotiate settlements.[351] Certain powerful bishops, such as Ambrose of Milan, had already been playing high-profile negotiating roles between warring political

[348] Ch.5.
[349] Caesarius was arrested on three separate occasions (Klingshirn, 'Ransoming', 188, n. 49; and ibid. *Caesarius: Making*, 93-97): twice by the Visigoths (*Vita Caesarii* 21-4; 29-31) and once by the Ostrogoths, (*ibid.* 1.36). See also below on the Burgundian king's repeated interrogation of the Catholic bishops' connections with Clovis at Lyon c.500.
[350] Schäferdiek, *Kirche*, 45-47; Hannig, *Consensus* (above).
[351] Heinzelmann, 'Bischof und Herrschaft'.

factions within the empire since the 380s,[352] and, as we saw in Chapter One, even under the functioning imperial system bishops were already taking a more active role as ambassadors for their cities. However, the chaotic conditions in fifth century Gaul created unprecedented opportunities for bishops at almost all levels of seniority and across a much wider geographical spread to act as political peace-makers.[353]

For almost 130 years (c.405 – 536) new arrangements for landholding and tax distribution were struck almost once a generation between local populations and a rapidly changing constellation of usurpers, *foederati* and successor regimes. During this time, bishops acted as all-purpose intercessors and often helped to negotiate various types of settlement between new regimes, local Gallo-Roman populations and the rump imperial state, while it still existed.[354] By the sixth century, bishops and episcopal councils started to serve as conduits and fora for negotiating economic or fiscal relationships between regimes and cities or regions. Naturally, some of these negotiations were then articulated in conciliar *acta*, which helped to expand the notion of what a 'canon' could do. At a more 'granular' level, episcopal mediation or arbitration gained value as a form of dispute settlement or intercession which depended upon social networks and Christian ideology, rather than the imperial

[352] But Ambrose's prominence was relatively short-lived and depended upon his proximity to imperial administrations in Milan (McLynn, Ambrose, 120)

[353] P. Brown, *Poverty and Leadership in the Later Roman Empire* (Hanover, New Hampshire, 2002), 71 bishops became more active as embassies for their cities.

[354] Examples from Gaul: Orentius of Auscitanum supposedly conveyed an offer of peace between the Goths and Romans in the 430s (Schäferdiek, *Kirche* Westgoten, 10);
bishop Melaine of Rennes (the city's first bishop) helped facilitate the peace treaty between the Franks and Armoricans in 497 supposedly saying '*Il faut faire la paix chrétiens*';
Southern Gallic bishops facilitated negotiations between the penultimate Western emperor, Nepos and Euric (Schäferdiek, *Kirche*, 14).
Leo I had conducted diplomatic expeditions to Aetius 440, Attila 451 and negotiated with Gaiseric in 455 (N. James, 'Leo the Great and Prosper of Aquitaine: a Fifth Century Pope and his Advisor', in JTS (1993), pp. 554 – 584, p. 568; Prosper, *Chronicon*, Mommsen (ed.) 478, 482 – 85); Lupus of Troyes saved his city from Attila in 451 (Prinz, *Mönchtüm*, p. 52);
Dunn, 'Crisis Management' on the expanding role including especially mediation for bishops in the chaos of early fifth-century Gaul.

state.[355] It was in this period that funerary inscriptions of bishops in fifth- and sixth-century Gaul starting to depict them consistently as peacemakers.[356] This opened the door to bishops expanding and transforming their remit as intercessors.

The formation of successor kingdoms also prompted Gallic bishops to generate new 'canon law' by further disrupting the established model of metropolitan authority and weakening the influence of papal decretals to determine organisational structures in Gaul. In response, provincial bishops generated legislation to assert or defend their authority. Metropolitan status (in Gaul at least) included the right to convene church councils, oversee episcopal elections and appointments, issue *litterae formatae* (a means of controlling the movement of subordinate clergy) and ordain clerics.[357] Under the functioning Empire since Nicaea 325, it had been agreed that episcopal authority mirrored that of the underlying administrative divisions.[358] Tensions could and did arise, for example, when the Gallic prefecture was transferred to Arles in 392, this elevated Arles and threw it into conflict with the neighbouring see of Vienne, which had until that point been the metropolitan capital of Viennensis.[359] A council (if there was only one) was called in Turin around 398/99 and attended by Gallic bishops to settle a series of organisational conflicts between the bishops of Arles, Marseilles and Vienne over various metropolitan rights in the provinces of Narbonensis Secunda and Viennensis.[360] The disputed status had continued and, in the chaotic fifth century, Hilary of Arles had continued the

[355] James, 'Beati', 46, episcopal intercession significantly shaped social relations in Merovingian Gaul; N.B. intercession was not just limited to bishops, ascetics like Geneviève of Paris (also ransomed prisoners and interceded with kings, *Vita Genovefae Parisiensis*, 12-13, 26, 56, 226, 237. Bartlett, *Dead*, 38.
[356] Brown, *Poverty*, 72.
[357] Scheibelreiter, 'Structure'; Loening, *Geschichte* I, 362-442.
[358] Scheibelreiter, 'Structure', 680.
[359] R. Mathisen, 'The Council of Turin (398/399) and the Reorganization of Gaul ca. 395/406', in *Journal of Late Antiquity* vol.6. no.2 (2013), 264 – 307, 289.
[360] Mathisen, *Factionalism*, 23-29; ibid., 'Turin', 267 & 282 onwards gives a summary of the issues considered. Viennensis was the metropolitan city according to the *Notitia Galliarum*. At Turin, Gallic bishops had agreed to split the province (un-canonically) between the two sees, but did not name the cities subordinate to each. (Turin, c.2 CCL 148.55-56).

struggle for primacy by generating local conciliar legislation, which buttressed his own authority to manage subordinate dioceses. When imperial control was re-asserted the dispute returned to the medium of papal decreta and imperial rescripta.

However, once the Ostrogothic and Burgundian kingdoms encompassed the sees in question and established a border along the Durance river (later along the Isère, once the Franks and Ostrogoths started to annex the Burgundian kingdom in 524), the metropolitans of Arles and Vienne reverted to conciliar legislation as the primary means of asserting and buttressing their own authority.[361] They invited one another's suffragans to their councils (against canonical protocol) in an attempt to assert seniority over one another. Papal decretals and offices (i.e. the title of papal vicar of Gaul, along with the papal *pallium*) were still solicited (by the bishops of Arles) in an attempt to promote their authority within Gaul; however, these instruments do not seem to have prevented the bishops of Vienne (or presumably elsewhere) exercising metropolitan rights beyond their 'official' provinces. Avitus of Vienne invited bishops from all across Gaul to attend the council of Epaon in 517, despite that fact that Pope Hormisdas had explicitly endorsed the view held of Caesarius, that Vienne's metropolitan authority did not extent beyond the original metropolitan diocese.[362] Avitus was able to disregard papal decretals on church hierarchy in a way that Hilary of Arles ultimately had not been able to. On points of doctrine or liturgy, the opinions of popes remained authoritative (see presence of papal decretals in Gallic compilation addressed in the next chapter).

[361] Chapter Three.

[362] The sees of Vienne and Arles had clashed since the praetorian prefecture moved to the latter city and thus gave its occupants an opportunity to extend their authority at the expense of the former. In a letter of February 517 Hormisdas wrote to Avitus, explicitly addressing him as the Bishop of Vienne along with his suffragans, the implication being that Avitus had no authority whatsoever beyond his traditional see as had been pronounced by Pope Symmachus. Hormisdas to Avitus, Avitus Ep.42, *Ibid*. p.129; Shanzer and Wood at n. 4 highlight the 'sting' of Hormisdas 'specifically limiting Avitus' authority to Geneva, Grenoble, Tarantaise and Valence. See also, Klingshirn, *Caesarius*, 70 - 71. We know Avitus invited bishops from beyond his dioceses and indeed the Burgundian kingdom from the letters of convocation preserved in two canon-law MSS containing Epaon (MSS L and S, see Shanzer and Wood, *Avitus*, 308-309).

However, on contentious points of church hierarchy or in relation to developing areas of law (for example church property or incest) these interpretations did not hold the weight they had previously when combined with imperial edicts and pan-imperial patronage networks.

Even on points of doctrine, the successor kingdoms facilitated bishops pursuing their own agendas and using their councils to subvert one another's authority. Julianus of Vienne organised a council in either 528 or 529 at Valence, then part of the Burgundian kingdom, at which his rival, Caesarius of Arles, was condemned of heresy for his subscription to Augustinian views on Grace (specifically, on prevenient Grace, which conflicted with the Gallic theological consensus), despite the fact Caesarius had the support of Rome *and* official status as papal vicar.[363] Such an event would have been unthinkable without the Burgundian-Ostrogothic border running (at that point) along the Isère. And, as we shall see in Chapter Three, they amended and extended their metropolitan powers within their own region to give themselves greater control over churches and church property within their provinces.

The Arian Variable

In addition to removing access to new 'imperial' sources of legislation or judgments, the successor kingdoms created challenges and conditions within their borders which invited a legislative response from the local episcopate; i.e. they contributed to a demand for new ecclesiastical law. One of the most important 'conditions' to influence the development of canon law, was that successor kingdoms happened to put 'Arians' in charge of large swathes of former Western Empire. Several of the groups which led the successor kingdoms, most notably the Goths (both Visigoths and Ostrogoths) subscribed to a form of Christianity which had been rejected by the Theodosian dynasty in

[363] Klingshirn, *Making*, 127-41; Mathisen, 'Caesarius Grace Orange', 210f; on Valence 528/9 see *Vita Caesarii* 1.60 (MGH, SRM III, 481).

the 380s (despite being the 'official' religion of the emperors at the time the Goths originally converted to Christianity in the 370s).[364]

It is not clear precisely what the priest Arius, after whom the movement was named by its opponents, taught, or if his doctrine had been altered during its reception amongst the Goths. 'Arians' in the fourth century, at least, rejected the definition of the Trinity established at Nicaea 325, which asserted complete equality between father and son.[365] By the fifth century, 'Arianism' seems to have become a marker of 'non-Roman military identity'. [366] For a not inconsiderable window of time, it must have seemed to Gallo-Romans as though almost all of the territories of the former Western Empire would be ruled by dynasties subscribing to Arian Christianity. Between 470 and the late 510s, North Africa, Spain, southern Gaul (up to the Loire) and the Italian peninsula were all ruled by Arian kings. Even Clovis seems to have toyed with Arianism and only converted to Catholicism definitively in the context of his invasion of Visigothic-controlled Aquitaine in 507.[367]

It is difficult to assess what impact these Arian regimes had upon Catholic churchmen and laity, not least because centuries of Catholic narrative-building portrayed the Arian/Catholic divide as an implacable, sectarian conflict.[368]

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[364] Heather, *Restoration*, 58-60.

[365] R. Williams, 'Arianism', in E. Ferguson ed. *Encyclopaedia of Early Christianity* (New York, 1997), 107-11; E. James, 'Gregory of Tours and "Arianism"', in A. Cain and N. Lenski eds. *The Power of Religion in Late Antiquity* (Farnham, 2009), 327 – 339 sees 'Arians' as in Gregory's History as a literary construct with little basis in reality; on Arians and their identifiable practices, such as triple immersion in baptism and a different style of tonsure, in Visigothic Spain see E. Thompson, *The Goths in Spain* (Oxford, 1969), ch.2.

[366] Halsall, *Migrations*, 469.

[367] Clovis toyed with Arianism and certain of his family members converted to it D. Shanzer, 'Dating the Baptism of Clovis: the bishop of Vienne vs. the bishop of Tours', *Early Medieval Europe* vol. 7, Issue 1, (1998), pp. 29 - 57; I. Wood, 'Gregory of Tours and Clovis', *Revue Belge de Philologie et d'Histoire* 63 (1985), 249 - 72; R. Fletcher, *The Conversion of Europe: From Paganism to Christianity 371 – 1386 AD* (London, 1997), 104 – 5; Wood, 'Burgundians and Byzantium', 2 and 5; also Shanzer and Wood, *Avitus*, 362-9, Avitus Ep. 46 congratulating Clovis on his recent baptism. He portrays the Clovis' conversion to orthodoxy as his entry to grandeur of the Greek East. Schäferdiek, *Kirche*, 41f. Clovis' conversion and hostility to Franks prompts Alaric's vigorous policy of Catholic accommodation and creation of a two-confessional *Landeskirche*.

[368] Starting with Gregory of Tours own portrayal of Arians James 'Gregory of Tours and Arianism'; Wood, 'Gregory of Tours and Clovis'; for a critique of the view that Arians

Earlier in the fifth century, Arian *magistri militum* and de facto rulers, such as Ricimer, must have eased the transition to rule by Arian king.[369] There is very little evidence to tell us one way or another whether there was an Arian episcopate or how well organised and powerful it was, i.e. whether they represented a substantive competitor to catholic institutions.[370] Obviously, the

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and Catholics were implacably opposed in fifth-century Gaul, Schäferdiek, *Kirche*, esp. 1-13.

[369] R. Mathisen, 'Ricimer's Church in Rome: How an Arian Barbarian Prospered in a Nicene World', in A. Cain and N. Lenski eds. *The Power of Religion in Late Antiquity* (Farnham, 2009), 307-327.

[370] R. W. Mathisen, 'Barbarian Bishops and the Churches "in Barbaricis Gentibus" During Late Antiquity', *Speculum* Vol. 72., no.93 (1997), pp. 681-4 surveys the evidence for the Kingdom of Toulouse and concludes there is only evidence for '*sacerdotes'* at court and with the army, none for '*episcopi'*.

Eunapius mentioned men dressed as monks and bishops who 'claimed' to be Christians amongst the Goths who crossed the Danube in 376 (p. 677);

Ammianus reported that just before the Adrianople in 378 'a priest [*presbyter*] (so they call themselves) of the Christian religion was sent as an ambassador by Fritigern; along with other humble ones (*humilibus*) he came to the emperor's camp.' (p.677);

Ambrose referred to *sacerdotes Gothorum* as 'idolatrous'. In 409-10, the puppet emperor Priscus Attalus was 'baptized by Sigesarius, the bishop of the Goths, to the great satisfaction of Alaric and the Arian party.' The (probably Gothic) Count Sigisvult, sent to deal with the African rebel count, Boniface, in 427, had with him an elderly Arian bishop, Maximinus, who conducted diplomacy on Sigisvult's behalf. All this led Mathisen to conclude that groups of Arian barbarians existed and seem to have accompanied 'barbarian' armies around the western empire.

There are two references to the Visigothic kings having their own clerics:

Sidonius mentioned Euric attending services in the 460s ministered by '*sacerdotum suorum*'; **Ennodius'** *Vita Epiphanii* has the protagonist refusing to attend a banquet held by Euric in 474 because it was 'polluted by his prelates (*sacerdotes*).

The *Vita* of **Vincent of Agen** mentions an Arian *sacerdotem* attempting to steal the martyr's remains. A presbyter, Othia, who dedicated a church to saints Felix, Agnes and Eulalia between Narbonne and Beziers, was probably a Goth and possible therefore an Arian. **Gregory of Tours** reports a theological debate between an Arian and a Nicene deacon in the early 470s.

Hydatius' chronicle in 455 records 'Ajax, by nationality a Gaul, after becoming an apostate and the *senior Arrianus*, appeared among the Suevi as an enemy of the Catholic faith and the divine Trinity.' Ajax was said to have come 'from the abode of the Goths, with the support of his king.' Mathisen notes Ajax was not described as a having been ordained and *senior Arrianus* is an intriguingly ambiguous term. Also, the Suevi were converted to Arianism by a mission from Theoderic and remained thus until the Visigothic conversion in 589. After the destruction of the Visigothic Kingdom of Toulouse by Frankish conquest in 507, Visigothic bishops in Spain are not mentioned until the reign of Leovigild (572 – 86). Leovigild's successor, Reccared ordered the *sacerdotes sectae Arrianae* to convert to Catholicism and at Toledo 589 both Catholic and Arian bishops attended to ratify his decision.

answer to these questions is pinned to the view one takes on the nature of groups such as Visigoths.

With these caveats in place, it is nevertheless possible to say that the presence of 'Arian' ruling dynasties in late-fifth and early sixth-century Gaul, under *certain* circumstances, disrupted or prevented the Gallo-Roman bishops from replicating the legislative and judicial partnership they had enjoyed with the imperial state. This in itself is an important variable to take into account when narrating the transition of canon law from an imperial to a post-imperial system of rules. It might also have encouraged bishops to become more innovative and autonomous in adapting and interpreting legislation for themselves.

There was no one single model for relations between Arian kings and Catholic Gallo-Roman episcopates. Different kingdoms engendered different matrices of political, social and religious factors, which could result in open hostility between Catholic episcopates and Arian rulers, as in the Vandal Kingdom, or close cooperation, as in the Ostrogothic kingdom (see below).[371] Even individual kings could change tack according to circumstance. For example, as has already been mentioned, the first Visigothic king, Euric, seems initially to have pursued a policy of either neglect or open hostility towards the Catholic episcopate but subsequently changed course to engage more amicably, perhaps in order to consolidate his internal power in response to a growing Frankish threat from the North.[372]

Nevertheless, the presence of 'Arian' rulers in Gaul c. 460s - c. 536 had a transformative effect upon Gallo-Roman ecclesiastical legislation in certain kingdoms at least.[373] The greatest source for the potential impact of Arian rulership upon ecclesiastical law in Gaul was the Breviary of Alaric, promulgated in 506, which condensed and edited the foundational components of late-Roman law (both laws and jurisprudence) and was promulgated as the sole

[371] On religious strife in the Vandal Kingdom, Heather, *Restoration*, 138.
[372] Schäferdiek, *Kirche*, 13-22, perceives the shift to coincide with Euric's obtainment of 'sovereignty'.
[373] Cf. Esders, *Rechtstradition*, 318 suggests Arianism of Burgundian kings might explain their relative lack of legislation on the Church.

authoritative source of law in the Visigothic Kingdom in 506. No other versions of imperial law were to be considered authoritative in the Visigothic Kingdom.[374] Through its editorial choices and commentary on the Theodosian Code, the Breviary provides us with an idea of which components of ecclesiastical legislation Alaric's regime was prepared to endorse.

While the Breviary is most frequently seen as an attempt to consolidate relations between Alaric and his (Catholic) Gallo-Roman subjects, the picture that emerges regarding Catholic churches was one of 'semi-disestablishment'.[375] The vast majority of imperial laws pertaining to religion, clerics and churches were dropped. Only nine out of well over 200 potential laws on religion were retained.[376] Of these nine, five concerned the intersection of ecclesiastical and secular justice, three regulated Jewish-Christian relations and one confirmed tax exemptions for clerics.[377] Sections dealing with heretics (66 constitutions), apostates (seven), pagans sacrifices and temples (25) and contenders of religion, i.e. those with dubious but perhaps not entirely heretical practices, (6 constitutions) were entirely dropped as were the majority of laws pertaining to Jews and other sects (29).[378]

The first title of Book Sixteen of the Theodosian Code, which defined 'Catholic faith' along Nicene lines and prohibiting all other sects from

[374] Wormald, *Making*, 36-37; King, *Law*, 223-32; H. Nehlsen, 'Alarich II. als Gesetzgeber. Zur Geschichte der Lex Romana Visigothorum' in G. Dilcher, ed. *Studien zu den germanischen Volksrechten*. *Rechtshistorische Reihe*, vol. 1 (Frankfurt am Main, 1982), 143-203; Schäferdiek, *Kirche*, 42 onwards; Loening, *Geschichte*, I, 518-20. In addition to a condensed version of the Theodosian Code, the Breviary contained sections of Gaius' *Institutiones*, Pauline sentences, excerpts from the Gregorian and Hermogenian codes and a responsum of Papinius. To these were appended '*interpretationes*', the which mostly summarized the laws. J. Matthews, 'Interpreting the *Interpretationes* of the Breviarium', in: R. Mathisen (ed.), *Law, society, and authority in late antiquity*, (Oxford, 2001), 11 – 33; the key edition is *Lex Romana Visigothorum*, ed. G. Hänel (Berlin/Leipzig, 1849).

[375] Historians who have characterized LRV as a sop to Catholics include Wood, 'Gregory', 258; King, *Law*, 10-11 for contrary view; Mathisen, 'Second Council of Arles', 536; Matthews, 'Interpreting', 18; Schäferdiek, *Kirche*, 42 sees it as a sophisticated attempt at reconciliation which put the Arians in charge whilst protecting the material position of the Catholic churches.

[376] Matthews, 'Interpreting', 22 onwards gives an overview of the edits.

[377] CTh 16.2.2 (319) (= Brev. 16.1.1) freedom from obligations; Everything from 16.8.7 *De Judaeis, Caelicolis, et Samaritanis*, except 16.8.5 & 7 was dropped.

[378] CTh 16.5.1-66 *De Haereticis* which was dropped entirely.

establishing churches (the key vehicle to which most religious legal privileges were attached), was dropped. It has been noted by Klingshirn and Matthews, among others, that the *Breviarium* did not include any anti-Arian legislation.[379] This can be taken further. The compilers of the *Breviarium* stripped out both the theological justification for Nicene Christianity,[380] the huge corpus of imperial legislation which enabled the suppression of virtually all non-orthodox religious practices,[381] and, likewise, the laws on monks.[382] The imperial law which had provided secular legal backing to established church canons was also excluded.[383]

The Breviary compilers were apparently only interested in a handful of the original constitutions which preserved limited judicial and fiscal privileges of the clergy, regulated limited aspects of Christian-Jewish interaction and promoted clerical celibacy.[384] Furthermore, regarding the judicial privileges of bishops, the *audientia episcopalis* and *privilegium fori*, Alaric's compilers demurred from including 'maximalist' formulations of episcopal legal privilege promulgated under Theodosius I (in the East) or Honorius.[385] Instead they selected legislation

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[379] Klingshirn, *Caesarius: Making*, 102; J. Matthews, 'Interpreting the Interpretationes of the *Breviarium* ', in: Ralph Mathisen (Ed.), *Law, society, and authority in late antiquity*, (Oxford, 2001), 18.

[380] CTh 16.1.1-2, excluded from the *Breviarium*.

[381] Especially, 16.5.1-66 *De Haereticis* which was entirely dropped.

[382] CTh 16.3.1-2.

[383] CTh 16.4.45 (421).

[384] The only titles included in the *Breviarium* from CT Book 16 were: 16.2.12, 23, 35 & 39 on judicial and fiscal privileges of the church; 16.8.5&7 limited proscriptions against interaction with Jews; 16.2.44 against clerics interacting with women.

[385] 'Maximalist' versions of the *audientia episcopalis* and *privilegium fori* which would have been available to compilers as part of the Theodosian Code, but which were excluded included:

CTh 1.27.1 (Constantine, 318) (= Sirm.1), the earliest legal precedent for the *audientia episcopalis*. Note the authenticity of this law has been disputed

CTh 1.27.2 (Arcadius, Honorius and Theodosius, 408) which defined the bishop's ability to hear all cases where parties were willing, backed their judgments with secular authority and declared them inappellable. (Pharr, 31f.).

CTh 11.39.8 (Gratian, Valentinian and Theodosius, 381) a bishop was not required by honour or law to give testimony. (Pharr, 340).

CTh 16.2.14 (Constantius and Constans, 357) granted freedom from every type of legal suit and all forms of public service for all clerics as well as their associated tradesmen ['…*hominis eorundem, qui operam in mercimoniis habent,…*'] and also their families, i.e. wives, children, and attendants, this latter group being to hold this privilege in

from Valentinian III's late reign and that of a later successor Majorian (457 – 461), which aimed to curtail the powers of the clergy.[386] The voluminous Novel of Valentinian III no. 35, 1 was also included, which curtailed the legal privileges of the clergy.[387] It made special provision for churchmen appearing in the criminal courts to face charges of despoiling public buildings. Likewise, Nov. Val. 23, *De sepulchri violatoribus*, stated that clerics were frequently accused of this crime and that, if convicted, they were to receive a more severe punishment than a similarly convicted layman. The *Breviarium* compilers decided to include this law verbatim stating that it needed no interpretation.[388] On the other hand, *Manumissio in ecclesia* and church asylum were preserved.[389] Alaric's compilers also abandoned the majority of constitutions directed against Jews, Samaritans and Caelicolists, which could suggest either a policy of toleration or,

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perpetuity ['*…immunes semper a censibus et separate ab huius muneribus perseverent.*'] (Pharr, 442; Mommsen&Meyer, 839).
CTh 16.2.41 (Honorius and Theodosius, 412) (=Sirm.15) the strongest formulation of clerical *privilegium fori* in the corpus of imperial laws: when clerics, deacons, or any other inferior minister of the Christian faith are accused, they may only have their cases heard by a bishop and that such accusations must be supported by the same level of proof as would be required in formal proceedings.
CTh 16.2.47 (Theodosius & Valentinian, 425) (= Sirm. 6) – see above.

[386] **CTh 16.11.1**, (Arcadius and Honorius, 399) (=Brev. 11.5.1): bishops could hear cases involving religion, but judges should hear all others.
CTh 2.4.7 (Honorius and Theodosius, 409) (=Brev. 2.4.7), specified that whenever a civil suit involved a priest or bishop it was to be settled speedily by the judge for it was 'not fitting' for 'the defence of a venerable place or name to be delayed for a long time'.

[387] **Nov.Val.35** (=Brev. 12) Bishops can only judge if both parties agree. The law was explicit that bishops '...do not have a court according to the laws, and they cannot have cognizance of cases except in religious matters, according to the divine imperial constitutions' of Arcadius and Honorius, which are revealed in the Theodosian Corpus.' Also, lay complainants in both civil and criminal matters can compel a cleric before a judge (trans. Pharr, 545); **35.1**, bishops must answer civil and criminal charges in public courts, but they are allowed a procurator in civil cases; **35.5** *defensores ecclesiae* cannot be ordained; **35.6** people of lower birth cannot escape to the clergy.

[388] N.Val.23 (Pharr, 535).

[389] **CTh 4.7.1** (Constantius, 321) (=Brev. 4.7), confirmed that manumission conducted in church was legally valid, even without a written instrument, and that slaves freed in this manner were to receive full freedom.
CTh 9.45.4 (Theodosius and Valentinian, 431) (=Brev. 9.34.1) laid out detailed rules for exactly how church sanctuary was to operate in practice: refugees from secular authorities could claim sanctuary in church grounds and outbuildings, not just the central church building; however, they were not to sleep within the church itself or to bear arms; conditions were specified under which secular authorities could legitimately breach church sanctuary.

alternatively, that imperial law was no longer considered an important arena in which to assiduously enforce such distinctions.[390]

Alaric's Breviary thus removed key 'guardrails' protecting Catholic public religion and the position of the Nicene bishops in relation to wider society. Under the Western Empire from the 380s onwards, the entire community was effectively required to subscribe actively to state-backed, orthodox Christianity, mediated via the Catholic episcopate. Failure to do so could disbar a person from lucrative and prestigious careers, expose them to real legal jeopardy and, from the start of the fifth century in Gaul, potentially invite direct intervention and possible exile from the metropolitan bishop and praetorian prefect. Under Alaric's regime by contrast, Catholic Christianity was effectively reduced to the status of one potential valid religious sect amongst several.

It is difficult to ascertain whether the *Breviary* altered the Catholic episcopate's position as it stood at the turn of the sixth century, or if it merely affirmed it. Most have assumed that the law must have made concessions to the Catholics in order to make it a worthwhile undertaking for Alaric.[391] If this were the case, it could even be inferred that the Catholic episcopate had been essentially 'disestablished' for some time before 506.

There is circumstantial evidence that Gallic bishops felt the absence of these more extensive privileges. As we shall see in the next chapter, Gallic bishops under Alaric and other Arian kings started to reiterate imperial laws (or principles enshrined in imperial laws) on subjects like clerical discipline or how to interact with heretics in their own conciliar legislation. Furthermore, whilst Alaric's Breviary was by far the most widely transmitted recension of imperial law in early medieval Gaul,[392] (perhaps suggesting Alaric's officials succeeded in suppressing earlier versions of the Theodosian Code), its version of the Theodosian Code's Book Sixteen was often supplemented in sixth- and seventh-century canon-law compilations with the Sirmondian Constitutions, which

[390] Everything from CTh 16.8.7 *De Judaeis, Caelicolis, et Samaritanis*, except 16.8.5&7 was dropped from the Brev.
[391] Above, p.110.
[392] A curious fact given the reduced privileges it afforded to Catholic bishops, despite being transmitted by Catholic churchmen under a Catholic dynasty.

contained far more extensive privileges for Nicene bishops (and even perhaps in some versions were doctored to extend these privileges).[393] In the next chapter we shall see how bishops also responded to this change in status under Alaric's version of Roman law via their canonical legislation and that canons once again became the preeminent tool for defining and regulating the status of the 'orthodox sect', as they had originally in the early fourth century Greek East.

During the Priscillianist controversy in the late fourth century and the Donatist controversy in the early fifth, Nicene bishops deliberately conducted their disputes via imperial courts. However, the advent of Arian kingship forced bishops to rely once again on their own councils and canons in order to regulate their communities and sustain their positions of authority. Likewise, whereas Hilary of Arles had intervened in local Provencal elections with the help of armed forces and 'official' disciplinary church councils, under Arian Visigothic rule, Sidonius was forced to oversee an episcopal election at Bourges on his own, unable even to get neighbouring suffragan or metropolitan colleagues to attend the election, in contravention of the requirements of Nicaea.[394]

The domination of southern Gaul by Arian regimes c.460s – c.507 / 530s *could* also create a certain distance between Catholic episcopates and ruling regimes, which might have fostered a stronger collegiate identity amongst Catholic bishops, in turn allowing them to coordinate and act in their collective interests. The negotiations between the Burgundian king, Gundobad, and the Catholic bishops in his realm at Lyon in 500 highlight this dynamic, as does the emergence of 'episcopal strike action' at the council of Lyon 518/23 discussed in the next chapter.[395]

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[393] MSS Ivrea, Biblioteca Capitolare 35 [E]; Berlin, Staatsbibliothek lat. 82 (Phillips 1741) + Vatican City, Bibliotheca Apostolica reg. lat. 1283 [Y]; Paris, Bibliothèque Nationale lat. 12445 [D]; Oxford, Bodleian, Selden B.16 [O] all transmit the short recension of the Sirmondian Constitutions (i.e. nos. 1 - 7) as supplements to Book Sixteen of Alaric's Breviary. Vessey takes this as evidence the short version of the SCs could have been in existence with the Breviary by the early sixth century. (Vessey, Origins, 182).

[394] Loftus, 'Elections', 334f.

[395] The Arian king, Gundobad, investigated the senior Catholic clergy of his territory at a mixed council (attended by Catholics, Arians and laymen) held at Lyons c.500. He was eqully interested in their theology and connections with the expansionist Frankish kingdom. (Hefele, vol. IV, Sec. 214).

It is imperative to reiterate, however, that the impact of Arianism upon canon law in Gaul was not uniform. It was always refracted through the institutions present in each kingdom. In stark contrast to the Burgundian realm (and the Visigothic kingdom before c.470s) the Ostrogothic regime of Theoderic (who annexed Provence after the Visigothic collapse in 507) achieved a much closer working relationship with its Catholic episcopate. The Arianism of the ruling Ostrogothic regime was far less influential in determining the 'shape' of canon law. While Theoderic reigned, Provence enjoyed access to institutions of unsurpassable imperial pedigree, the pope and senate. Theoderic's status as a powerful and self-confident monarch mitigated the state of permanent suspicion regarding the Catholic episcopate, which arose periodically in the other Gallic kingdoms.[396] Continued access to pope and senate also meant that Caesarius could run his church more or less as he might have under the functioning empire; i.e. with a ready exchange of appeals to and legal decisions from the central 'imperial' authorities.[397] He received the office of papal *vicarius* and confirmation of his metropolitan rights over Valence, Tarentaise, Geneva, Grenoble and Vienne; the exclusive right to wear the papal *pallium* and extended rights to supervise the entirety of Gaul–an ambitious formulation, perhaps encouraged by Theoderic.[398]

Admittedly, continued Italian oversight was not always to Caesarius' advantage. Successive popes refused to validate Caesarius' requests for permission to endow his sister's nunnery using Arlesian church revenues and estates.[399] More troublingly, direct oversight from Ravenna and Rome meant that local opponents could bypass his authority and launch appeals to king and pope in Italy, just as they had with Hilary of Arles in the 440s, or the *causa Apiarii* in the generation before that. In 512, Caesarius was extradited to Italy

[396] Theoderic's political situation, Heather, *Restoration*, 69.
[397] Theoderic seems to have encouraged the Pope to appoint Caesarius papal *vicarius* of Gaul (Caesarius *Ep*. 7b.11; *Vitae Caesarii* 1.36-42; Klingshirn, *Making*, 130-2. Halsall, *Migrations*, 290 portrays Caesarius' close relationship with Theoderic's regime as part of Theoderic's attempt to appropriate the ideology and symbols of imperial rule for his own regime.
[398] Klingshirn, *Making*, 128; Mathisen, *Factionalism*, 40-69.
[399] Klingshirn, ibid., p. 133.

having been accused of despoiling the church at Arles. The pretext for this extradition stemmed from differences between Caesarius' legislation regarding the alienation of church property (formulated at Agde 506 under the Visigoths and by which Caesarius used church property to endow his sister's nunnery) and the tighter Roman regulations authored by pope Symmachus' council in 502. [400] Caesarius was 'tried' before Theoderic in Ravenna and only subsequently went before pope Symmachus in Rome. Theoderic's close union with the pope and senate allowed him to exercise power directly upon the Nicene church in Provence in spite of his Arianism, at least while he continued to dominate the western Mediterranean.[401]

Caesarius did not hold any church councils in Provence between the (Visigothic) Council of Agde 506 and Arles 524.[402] Odette Pontal suggested Caesarius refused out of pique at Ostrogothic hegemony. However, it seems more likely Caesarius simply did not need to organise provincial councils; he could run his church quite effectively with the help of external appeals to Italy.[403] Only once Theoderic's grip on power began to falter did Caesarius start to hold his own councils again.[404] Caesarius' councils are also notable for the prominent role played in them by Ostrogothic officials and their reliance upon authoritative interpretations of canon law from Rome. Senior Ostrogothic officials were present and subscribed to his canons at Orange;[405] while the trial

[400] Ch.3.

[401] The key sources for Caesarius' trials in Italy are the *Vita Caesarii* and letters between Caesarius and Ennodius, bishop of Pavia. (Klingshirn, *Making*).

[402] Weckwerth, *Ablauf*, 120, councils held under Ostrogothic rule included:
Arles 524 (restated four disciplinary canons); Carpentras 527 (one canon & disciplinary action); Orange 529 (theological); Vaison 529 (disciplinary); Marseilles 533 (disciplinary).

[403] Pontal, *Synoden* note 120.

[404] By the 520s Theoderic's general in Spain, Theudis, had effectively become independent and refused to come to Ravenna (Procopius, *Wars*, 5.12.50-5; Halsall, *Barbarian Migrations*, 292). Relations with the Eastern Empire began to cool after the accession of Justin in 520. Indeed, Pope John died in prison in 526, having failed to restore diplomatic relations with his embassy to Constantinople (he was accused of colluding with the Greeks). Boethius and Symmachus were executed as part of a purge of the Senate, after their associate, Albinus, wrote to Theoderic about his succession. Theoderic himself died in 526. Heather, *Restoration*, 87-89).

[405] Liberius, praetorian prefect of Gaul and seven *viri inlustres* signed (MGH, concil. I, 53; Klingshirn, *Making*, 141).

of Contumeliosus of Riez at Marseilles saw Caesarius using papal interpretations of existing canon-law to justify the authority of his disciplinary decision in the face of resistance from the Provencal episcopate. (See next chapter for this case study).

The religion of the ruling monarchy thus did not always determine relations with the Catholic episcopate, and its impact upon the canons they produced also varied. In the 470s, Sidonius had commented that what he truly feared from Gothic rule was not assaults against Roman walls, but against Christian laws.[406] Such a comment made sense in a context where Euric was ambivalent about preserving the established (Nicene) legal order, but it would have been a complete nonsense just thirty years later when Theoderic's regime helped to sustain the last ultra-loyalist enclave of 'central Roman-ness' north of the Alps. Nevertheless, on the whole, the brief interlude of assorted iterations of Arian kingship in the Visigothic, Ostrogothic and Burgundian spheres of Gaul served as a further source of disruption to the intricate and manifold interdependencies between imperial law, canon law and the catholic episcopate, which served to encourage new forms of 'law-making' in sixth-century provincial ecclesiastical councils.

While Alaric II opted to undertake a comprehensive and sophisticated reformulation of imperial law (partly in order to reconcile it to his Arian identity), other regimes experimented to varying extents with issuing 'legislation', the typical second plank of a successor-regime legitimation strategy. In light of the myriad interdependencies between imperial and canonical legislation outlined in Chapter One, the extent to which successor regimes endorsed existing imperial legislation and successfully replicated the functions of imperial legislators or judges, are potentially highly significant for explaining the 'evolution' of canon law in post-imperial Gaul. However, given the fragmentary nature of the legislative evidence and the extensive debates about the nature of post- or sub-imperial legal culture in the West, it is

[406] To Bishop Basilius '... *non tam Romanis moenibus quam legibus Christianis insidiaturum pavesco.*' (*Sidonius* ed. Anderson, vol.II, 7.6 316f.).

inadvisable to attempt to characterize the nature of law and law-making in each successor kingdom.[407] As McKitterick argued, the original purposes of these fragmentary 'codes' are obscure and might easily have been didactic (or even antiquarian).[408] We should therefore be hesitant to make inferences from them about the nature of royal law-making. Nevertheless, a few preliminary observations can be made regarding elements of legislation from the first generation of successor states, which are relevant to the episcopate.[409]

In the Burgundian- and Gothic-ruled South, even before Alaric's Breviary, kings appear to have facilitated a reasonable degree of legislative continuity.[410] The Visigoths 'issued' or promulgated law which closely resembled imperial legislation. The fragmentary 'Code of Euric' might actually have been produced under Alaric, and referred to laws potentially issued by Euric's father, Theoderic I (419 – 51).[411] It consists of 62 laws (titles 274-336) broadly covering 'civil law' subjects, e.g. property, inheritance etc. It contained three edicts pertaining to

[407] The term 'vulgar law' is now often avoided. (e.g. Scholz, *Merowinger*, does not use the term or cite Levy, and barely cites Brunner). The originator of the term, Heinrich Brunner, used it in a limited sense to refer to the 'law of the Romance peoples under Germanic rule'. (D. Liebs, 'Roman Vulgar Law in Late Antiquity', in B. Sirks ed. *Aspects of Law in Late Antiquity: dedicated to A. M. Honoré* (Oxford, 2008), 35 – 53 at 35 provides an historiographical overview; cf. Wormald, *Making*, 36-38). It was subsequently used more broadly to refer to the 'degeneration' of imperial legislation, as it diverged from the classical jurists (Mitteis), or was received and distorted in the provinces (Levy). Even as early as the 1890s Brunner decried the term's dilution. Levy's formulation became the most widely received in the Anglophone sphere. It perceived a simplification of complicated or intricate regulations, loss of distinction between refined notions of ownership, such as *dominium* vs. mere *possessio*, or certain types of property transfer. Recent scholarship has rejected the idea that there was an overall 'decline' in the quality or sophistication of law by pointing out that vulgarisms existed in all ages and by problematizing the extant source material.

[408] McKitterick, *Carolingians*, 38-45.

[409] The following deals primarily with legislation. Charters, testaments and formularies are treated below. Wormald, *Making*, 38 onwards &esp.44-46.

[410] Wormald summarises the north-south divide in 'Lex Scripta'; also Esders, *Rechtstradition*, 394.

[411] K. Zeumer, *Leges Visigothorum* (MGH LL nat. Germ. I 1), (Hannover/Leipzig,1902); J. Harries 'Not the Theodosian Code: Euric's Law and Late Fifth-Century Gaul', in W. Mathisen and D. Shanzer Eds. *Society and Culture in Late Antique Gaul, Revisiting the Sources*, (Ashgate Aldershot, 2001), 39 – 52; Liebs, Jurisprudenz, 157-163; Nehlsen attributes the Code to Alaric II, Nehlsen, 'Alarich II. als Gesetzgeber', 143-203; Schäferdiek, *Kirche*, 15f.; Collins, *Early Medieval Spain*, 24-29.

religion or the church.[412] Two 'codes' survive from the Burgundian kingdom, the *Liber Constitutionum* and the *Lex Romana Burgundionum*.[413] The *Liber Constitutionum* was a collection of laws issued by Gundobad (†516) and Sigismund (516-24). It gave legal privileges to Burgundians but mentioned Romans 40 times, and appears to have been only moderately influenced by imperial law.[414] Its form suggests that Burgundian 'kings'[415] issued responsive legislation on a semi-regular basis, which was then gathered together and promulgated in 517.[416] At least once they responded to a request for law from a bishop.[417] Sigismund's *Prima Constitutio* might have been commissioned at the first great Easter court after his conversion to Catholicism.[418]The *Lex Romana Burgundionum* consisted of 47 titles, mainly imperial laws, arranged in an order which mirrored that of the *Liber Constitutionum*. It is not comparable in scope or sophistication with the *Lex Romana Visigothorum* and there is no evidence it was promulgated.[419]

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[412] CE 335 property of intestate clerics, monks and nuns without successors to go to their church (Zeumer, MGH, LL Leges Visigothorum, 27); CE 306 that church property could be alienated with the consent of the clergy; a later recension of King Leovigild contained laws on asylum Lex. Vis. IX.3.1 (p.379); Schäferdiek, *Kirche*, 16-18.

[413] Both in L. de Salis, *Leges Burgundionum* (MGH LL nat. Germ. II 1), (Hannover, 1892); *The Burgundian Code: Book of Constitutions or Law of Gundobad, Additional Enactments*, trans. and ed. K. Fischer Drew, (Philadelphia, 1972); I. Wood, 'Legislation of *Magistri Militum*: the laws of Gundobad and Sigismund', in *Clio Themis Revue électronique d'histoire du droit* (2016); P. Heather, 'Law and Society in the Burgundian Kingdom', in A. Rio ed., *Law, Custom, and Justice in Late Antiquity and the Early Middle Ages* (London, 2011), 113-53.

[414] Wood, '*Magistri*', 12; P. Amory 'The meaning and purpose of ethnic terminology in the Burgundian laws' in *Early Medieval Europe* Vol.2 Issue.1 (1993), 1-28 critiqued the personality principle, arguing the code applied to a territorial area; Heather, 'Law' argues the majority of laws referred to 'all freemen'; on Roman influence, Esders, *Rechtstradition*, 396-98.

[415] Wood, '*Magistri*', argues Gundobad (†516) and Sigismund (516-24) legislated in the capacity of *magistri militum*, rather than kings/emperors, despite being referred to as '*rex*' by Prosper of Aquitaine and in their own legislation.

[416] The *Prima Constitutio* bears a date (Wood, '*Magistri*', 4); Heather, 'Law and Society', 127f., argues constitutions 1-41 were an earlier code of Gundobad's.

[417] LC *Constitutio Extravegans* 20 (8th March 516), to Bishop Gimellus of Vaison. Legislation on foundlings, because Gimellus had petitioned the King out of concern that exposed children were being left to die.

[418] Wood, '*Magistri*', 4 n.32.

[419] MGH LL nat. Germ. II 1, 123-170; Heather, 'Law'; Wood, 'Disputes', 10-12. The *Lex Romana Burgundionum* mainly comprises of laws from the Theodosian Code, but also

For the Franks, meanwhile, there is no evidence of 'imperial-style' legislation before the middle of the sixth century.[420] Whereas in most regions of Gaul kings legislated in a 'perpetuation of Roman patterns', the same cannot be said for the nascent Merovingian kingdom.[421] The earliest formulation(s) of Frankish law, the so-called *Pactus Legis Salicae*, comprised 65 anonymous 'laws', which set out a system of tariffs for transgressions between private parties.[422] Many were intended to regulate feud, a process which was not known or accepted in Roman law.[423] There was no evidence of a central legislative or judicial authority, and no discernable notion of crime. Furthermore, no mention was made of churches or religion in those recensions supposed to be the oldest.[424] Wormald characterized all surviving recensions of the *Lex Salica* as 'resolutely anonymous' and '*barely* royal'.[425]

Clovis did address a letter to the bishops of Aquitaine, which was included in Boretius' edition of Merovingian capitularies (but not Pertz' earlier edition).[426] However, the letter informed the bishops of an order Clovis had made (and extended) to his forces whilst on campaign not to harm clerics or

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from the pseudo-Pauline sentences, the Hermogenian and Gregorian codes, as well as the Institutiones of Gaius and the Codex Euricianus.

[420] Ch.4.

[421] Wormald's phrase, *Making*, 36; Esders, *Rechtstradition*, 398-403 on the character of sixth-century Frankish law.

[422] Pactus legis salicae, ed. K. Eckhardt, MGH LL nat. Germ. 4,1, (Hannover, 1962), is the standard edition, although Eckhardt came under fierce criticism from McKitterick, (*Carolingians*, 39-45) for his minimal consultation of early primary MSS; and Scholz, Merowinger, 74, n.29 notes that Nehlsen, (Sklavenrecht, 251 ff.) has thrown Eckhardt's dating and textual analysis into doubt. Wormald, *Making*, 40f. sees the *Pactus* as certainly Clovis' work (despite the lack of attribution) and, on the basis of c.47, generated at a time when the Franks ruled Neustria but had not yet crossed the Loire, i.e. 486-507; Ubl, — L'origine contestée de la loi salique. Une mise au point, in: *Revue de l'Institut français d'histoire en Allemagne* 1 (2009), 208–234, at 225f and 233., on the missing royal names from the epilogue thinks it existed in some form in the fifth century. *The Laws of the Salian Franks*, Trans. And ed. K. Fischer Drew (Philadelphia, 1991).

[423] Wormald, *Making*, 39 opted for a different emphasis in his later work: 'To deny the Germanic origins of feud-centered law verges on perversity.'

[424] Nehlsen, 'Entstehung'.

[425] Wormald, *Making*, 41, his emphasis.

[426] Chlodowici regis ad episcopos epistola (507-511), *Capitularia Regum Francorum*, MGH LL 2.1 ed. Boretius (Hannover, 1883), 1; cf. *Capitularia Regum Francorum* MGH LL I ed. G. Pertz (Hannover, 1835).

their dependents during the invasion. It suggests Clovis aimed to keep the clergy onside, but does not constitute a domestic legislative agenda per se.

The striking differences in content and form perhaps suggest that successor regimes engaged with 'imperial-style' law-making to varying degrees in the first decades of the sixth century. At the very least we might tentatively conclude that the Franks appeared slow to engage in 'legislative' legitimation strategies by comparison with their southern neighbours. The next chapter will highlight parallels and intersections between some of this successor-state legislation and contemporaneous local canon law. It will argue that, taken together, the two bodies of legislation can shed more light on the nature of legislation in the first generation of successor states. It will also argue that some of the idiosyncratic features of new canon law produced in individual Gallic successor kingdoms likely represents Gallic bishops attempting to mitigate and adapt to changes in the legal landscape.

2.C Christianisation and property

So far this chapter has identified two categories of near-term, institutional or political causal factor which contributed to the transformation of canons from 'internal' clerical regulations to tools for governing society as a whole and for defining the episcopate's role within it: the loss of access to 'unifying' imperial appellate and legislative authorities and, secondly, the new conditions developing within successor kingdoms, which were conducive to the creation of new types of ecclesiastical rulemaking. It was the convergence of the institutional or political streams with deeper currents, namely, continued Christianization and the accumulation of ecclesiastical property, that resulted in the transformation of post-imperial canon law in Gaul.

The processes of rural Christianization in early-medieval Gaul are somewhat opaque and hard to quantify ('the dark side of the moon' according to Peter Brown); however, there are some indicators for the timing of the

process.[427] Both material and textual sources suggest that it was only between c.400 and c.600 that Christianity truly became a mass religion in Gaul (and indeed across the former western empire more broadly), penetrating outwards beyond the urban centres, to which it had largely been confined over the proceeding century.[428] Even in Arles, the location of an imperial council in 314, there survives no evidence for a Christian population from before the fourth century.[429] Over 200 country 'parish churches' ('*parochiae*', see below) were created in the fifth and sixth centuries.[430] (Although there might have been a period of 're-paganization' in north-eastern Gaul in the fifth century.[431] Caesarius' sermons and Gregory of Tours' *History* frequently mention 'pagan' inhabitants of the countryside).[432] This period also saw a semantic shift in political ideology, as post-Roman communities came to be defined as *populus Dei* or even *ecclesia*.[433] This shifting demography and social identity acted like invisible dark matter to alter the 'behaviour' of canon law. It made exclusion from orthodox society a more serious disciplinary measure and widened the episcopate's expectations of what it could reasonably demand from individual members of society.

With regards to the evolution of canon law, it was also crucial that this Christianisation was accompanied by a large-scale influx of wealth to religious institutions. Traditional historical analyses perceived a substantial influx of wealth to a relatively well-formed ecclesiastical hierarchy in the decades

[427] Brown, *Eye*, 520 onwards; Bowes, *Private*, 125-85.
[428] S. Wood, *Proprietary*, 10 and 17; Klingshirn, *Making,* 57&209; R. Lane-Fox, *Pagans and Christians* (New York, 1987), 265-335; Lesne, *Histoire*, I, 61-67; In the Western Empire more broadly, Brown, *Poverty*, 17 onwards; *ibid*. *The Rise of Christendom* 2nd ed. (Oxford, 1996/2003), 106-10. On processes of conversion, Fletcher, *Conversion*, 34-65, 97-110, 130-59.
[429] That is to judge from grave inscriptions: Arles' baptistery and cathedral were *probably* built under Constantine (Klingshirn, *Caesarius Making*, 58).
[430] Brown, ibid., n. 73.
[431] Angenendt, 'Kirche als Träger', 123, n.131.
[432] Klingshirn, *Making*, 210.
[433] Ch.5.

following Constantine's conversion.[434] However, recent work has argued that landed wealth actually came into the hands of Christian communities only gradually and with increasing velocity over the fourth, fifth and sixth centuries. Since it is more feasible to assess the scale of this wealth in the late sixth and seventh centuries, I shall deal with this 'driving force' in Chapter Five and its impact upon canon law fully in Chapter Four. However, it is worth noting here that the 'influx' in Gaul, as elsewhere, was driven, primarily, by lay landowners seeking to donate land to existing religious institutions or to found new 'churches' upon their own estates.[435] Often, landlords or local communities would retain certain claims or rights to the foundation in question, sometimes to the extent that they could legitimately be considered to 'own' the church.[436] Likewise the priests of these churches often controlled some or all of their revenues.[437]

The motivations for making such investments were complex. Peter Brown has traced the evolution of a theology of wealth, according to which donors purchased salvation in exchange for donating their property to the church.[438] However, there were also material incentives. Churches benefited from fiscal immunity under imperial law; clergy were exempt from the *munera, extraordinaria* and curial obligations.[439] It is also possible, that in certain parts of Gaul donating land to a church provided a means of stewarding wealth for the

[434] For the traditional narrative, see esp. É. Lesne, *Histoire de la propriété ecclésiastique en France, I - III* (Lille, 1910, 1926, 1936); also, Jones, *Later Roman Empire*, 894ff.; Brown, *Eye,* 242 – 245, 493 discusses this older historiography.

[435] Bowes, *Private*, 130-57 and 188 on the inherent tension between rural landowners driving Christianization in the countryside and the established episcopal hierarchy based in the cities. Cf. debates about the 'legal status' of '*tituli*' of Rome, churches with large patrimonies which bore the names of their founding families. There were 29 listed in the Council of Rome 499. Bowes, *Private*, 62-75; Brown, *Eye*, 446, tituli clergy were independent of pope; J. Hillner, 'Families, patronage and the titular churches of Rome, c.300 - c.600', in *Religion, Dynasty and Patronage in Early Christian Rome, 300 - 900* (Cambridge, 2007), 225 – 262, sees *tituli* as legal property of the Roman church.

[436] S. Wood, *Proprietary*, 101 and below on '*Eigenkirchen*'.

[437] Ibid., 10-11 and below.

[438] Brown, *Eye* and *Ransom*; Early-Medieval donors gifted land (or themselves / their children as *oblationes*) in return for *remedium animae* (S. Wood, *Proprietary*, 101).

[439] Ch.1; Gaudemet, L'Église, 176-78; Jones LRE, 898.

benefit of a single heir and protecting it against the claims of the wider kin-group.[440]

These fiscal privileges were (eventually) confirmed by most of the Gallic successor-kings (and later supplemented with additional judicial privileges and political protection, see Chapter Five), thus preserving the fiscal incentive for Gallo-Romans to set up or donate to churches.[441] Crucially, the fiscal immunity for churches was articulated at least partly in canonical legislation.[442] This meant that when subsequent kings considered taxing churches or their estates, as Chlothar I appears to have, the matter was debated using the ideological frameworks underpinning canon law.[443] When the people of Limoges rejected Chilperic's taxation and burned the registers in the city, the King assumed it was the clerics and monks leading the action and had them tied to the ground and beaten.[444] Conversely, Gregory attributed Chilperic and Fredegund's massive remission of taxes to a fear that they would be punished by God otherwise and a desire to patronize churches instead.[445] One knock-on effect was to help raise canons and the ideological frameworks that underpinned them as a fundamental component of debates on legitimate exercise of public authority.

The pattern of these endowments and the precise status of churches to which the laity retained proprietorial claims have generated extensive and

[440] S. Wood, *Proprietary*, 101, n.69 entertains the possibility; Reynolds, *Fiefs and Vassals*, 76; cf. '*bocland'* in Anglo-Saxon England (Cubitt, Councils, 69-73). There are some indications that kin-groups retained strong claims to inheritances in the sixth-century successor kingdoms. *Liber Constitutionum* 51 contains a judgment against a father, Athila, who had ignored his obligation (according to the 'legal precepts') to divide his estate evenly between his sons and 'illegally' transferred everything to a third party. The king declared the transaction void and ordered the property to revert to the son (Fischer-Drew *Burgundian Code*, 58-59). It will be argued that episcopal oversight provided an array of legal and organisational benefits for estates in the divided Merovingian realms.

[441] Scholz, *Merowinger*, 71-75. Note, Bishops in subsequent early-medieval contexts routinely sought the same privileges from local kings. Cubitt, *Councils*, 112-13.

[442] Orleans 511, c.5 (MGH, concil. I, 4); Scholz, *Merowinger*, 71 interprets this as an explicit confirmation of the privilege contained in the Theodosian Code.

[443] Reynolds, *Fiefs*, 80; LH 4.2 Clothar decided not to tax churches after Injurious threatened divine retribution.

[444] LH 5.28.

[445] LH 5.34.

ongoing debates.[446] However, the emergence of '*Eigenkirchen*', also provides context essential for understanding the shifting status of canon law in sixth-century Gaul. Once large swathes of countryside were 'donated' to episcopal churches (or institutions subject to episcopal oversight), canons were transformed into a practical system of norms of direct relevance to landholders and tenants. Large quantities of sixth-century Gallic conciliar legislation dealt with subjects such as the internal management of church property by the episcopal hierarchy; the minimum standards required for ordaining a priest or bishop; whether laity could celebrate major festivals at small local churches or were obligated to attend the diocesan church. Canons issued in response to these questions did more than define how the laity participated in religious ritual. They offered practical regulations for the management of real wealth. Chapters Four and Five will argue that once canons became relevant to the management of large quantities of property in Gaul, parties inevitably started paying close attention to canonical rules.

The implications of all of these economic and demographic shifts for how we understand 'canons' as rules are enormous. Church councils and canons became the primary mechanisms by which the new 'terms of engagement' were negotiated and agreed for relations between religious professionals and 'ordinary' Christians. Bishops confronted the opportunities and burdens of assuming responsibility for the spiritual wellbeing of society as a whole, (not to mention their tenants, the *servi, coloni,* and later also the *liberti*), at precisely the same time that their most effective means of clarifying their own role in relation to society, i.e. imperial law, became less accessible. The question is, to what extent were canons transformed into fundamental norms purely as a

[446] For example, whether 'proprietary churches'/*'Eigenkirchen'* were originally Germanic, having their origin in the concepts of '*Munt*' or '*Gewere*' (S. Wood, *Proprietary*, introduction and 101); Stutz saw them as the product of a Germanic religious mentality. This view has now largely debunked. *Eigenkirchen* were also central to debates about the balance between public and private power and authority in Merovingian Gaul; i.e. did the rise of private churches help to undermine the 'public power' of episcopal churches and monarchy? For an overview, of the debates on immunities, exemptions and a critique of unilinear narratives of weakening public power see A. C. Murray, 'Immunity, Nobility, and the Edict of Paris,' *Speculum* 69 (1994), pp. 18 — 39.

result of 'Christianization'? Or was the transition driven rather by the fact that imperial law was rendered incapable of adapting to changing circumstances in the West?

Conclusions

What, in conclusion, were the conditions which led Gallic bishops to generate and to seek new forms of ecclesiastical legislation? Underpinning everything was the continued organic growth of Christianity. As greater numbers of people identified as Christian and as greater amounts of wealth were directed towards Christian institutions and religious professionals, significant new problems were encountered regarding the management of church property or the standards of religiosity expected from 'ordinary' Christians, which required some form of definition. However, as Christianization gained momentum in Gaul, the most effective tools for describing and organising society started to petrify. Gallic bishops lost access to the mechanisms by which new imperial law and canonical norms were generated or amended, the emperor, ecumenical council and to a lesser extent also the pope. 'Loss of access' spanned both increasingly feeble imperial governments (c.405/6 – c. 460s) and the final (as it turned out) fragmentation of Gaul into separate polities (c.460s – 530s). Throughout this period of fragmentation, Gallic bishops reacted by compiling relevant materials and, when possible, generating their own rules on a local basis either in council or by soliciting them from successor kings.

The fragmentation of Gaul into partially-distinct micro-Christendoms presented bishops with a variety of new challenges specific to their regions. Bishops were forced to make do with whatever institutions and political partners they could access in their locality, in order to reaffirm or reinvent the legal order as it had existed under the functioning empire. As we shall see in the next chapter, these heterogeneous conditions fostered a range of innovative approaches to creating, circulating and sustaining ecclesiastical law. There were

however certain commonalities between the kingdoms. The provincial council was adopted universally as a robust and flexible forum through which to generate or affirm ecclesiastical norms. Likewise, even ambivalent Arian regimes eventually saw the advantages of engaging with the Catholic *ecclesiae* in their spheres of influence. While the presence of successor kings, keen to imitate Roman emperors with their ecumenical councils, certainly provided new energy and incentives to produce canonical legislation on a local level, we should not expect these kings to dictate the terms of the legislation produced. Nor should they be seen necessarily as *the* definitive turning point in the transition from imperial- to post-imperial canon law. In the first half of the fifth century the 'devolution legislation' of Honorius and Valentinian III had repeatedly attempted to strengthen the hand of loyal bishops in order that they might take a more active role protecting orthodox society against heresy, a task which became even more pressing once the foundations of the Nicene legal order were overturned by Arian rulers.

Chapter Three: Gallic Canon Law c.400 - 536

This chapter will focus upon the content of the legislation itself to continue the argument that provincial Gallic elites started to adopt 'canons' as all-purpose tools for defining and fixing their place in the post-imperial order. It will argue that in post-imperial Gaul bishops were able to use their canons to buttress various types of rule and custom, some of which had previously been articulated in imperial law and some which had hitherto remained largely unwritten. Canons organised areas of social activity which had come to be associated with organised Christian religion but were not part of the formal ecclesiastical organization, areas such as care for the poor and the regulation of marriage.

Three sections will focus upon the impacts of 'balkanisation' upon canonical rules (i.e. the production of norms within semi-separate kingdoms); the steady expansion of canons into subject-areas previously covered by imperial law (e.g. in defining legal procedures and privileges of concern to the clergy); and, finally, an argument that Christian communities started to use canons in new ways. Case studies on specific legislative subjects such as church asylum, incest and ecclesiastical property are interspersed throughout in order to illuminate the shifting legislative landscape.

3.A The impact of balkanisation

The fragmentation of Gaul into successor kingdoms forced (or allowed) local bishops in each kingdom to formulate their own legislative responses to changing social and political realities. Councils of the Visigothic, Frankish and Burgundian realms reached different stances on how to manage church property and the powers a metropolitan bishop could exercise over his suffragans. Attitudes towards heresy and the admission of non-orthodox persons to the church community also saw different legislative approaches in

the different regions of Gaul. We saw in Chapter One how the accumulation of clerical wealth had resulted in a steady stream of legislation from emperors and ecumenical councils, with canons addressing the internal management of property within the church hierarchy and imperial law answering most other questions regarding its nature, protection and use. Once Gaul fragmented into separate kingdoms, any new question that arose concerning how ecclesiastical wealth was to be managed necessarily had to be addressed via conciliar canons, since they were the local organs capable of legislating on Catholic church foundations. By contrast in Italy and the Eastern Empire, the pope and emperor respectively articulated responses.[447] The process of balkanisation thus forced conciliar canons into de facto parity with traditional imperial legislative instruments.

Gallic ecclesiastical councils established general rules for how religious endowments could and could not be managed. Key questions included, could founders subsequently take back or sell property they had originally allocated to a church? Should any *oblationes* donated to the new institution be directed towards the central episcopal treasury, or could the local church dispose of all the wealth as it saw fit? What kind of arrangements could be agreed in order to facilitate the laity retaining some form of access to donated estates?

In the East, the question of whether church property could be alienated, was addressed in stages by imperial edict. The first was issued by Emperor Leo in 470.[448] It applied only to the church of Constantinople, which was subject to particular pressure. It banned all sales, gifts and exchanges, but permitted the church to cede the usufruct of property to an applicant for a fixed period or for his life, on the condition that on returning the estate he also gave to the church another of equal value. Subsequently, Emperor Anastius extended the ban to the whole patriarchate of Constantinople, but mitigated it by allowing alienation for reasonable causes under proper control.[449] Finally, Justinian tightened the proscription and extended it to the whole empire. However, he

[447] S. Wood, *Proprietary Church*, ch.1 esp. 16 onwards.
[448] CJ 1.2.14, (470), Jones LRE, 896 onwards provides an overview of the legislation.
[449] CJ 1.2.17 (Anastasius) cf. Just. nov. vii 535.

subsequently tempered this prohibition, presumably in the face of considerable popular demand for flexibility in managing church estates.[450] In Ostrogothic Italy, extensive legislation was prompted by the fractious papal elections, which saw rival candidates buying support from city factions by promising them church estates.[451] Prohibitions on the alienation were enacted by the Senate and successive episcopal councils under papal leadership.[452]

In Gaul, however, local episcopal councils set their own restrictions on alienation of church property, usually giving metropolitan bishops some leeway to alienate small bequests of lands under certain circumstances.[453] Agde 506, ruled that bishops could only alienate or sell church estates with the consent of two or more colleagues.[454] In the Burgundian kingdom meanwhile, the episcopate ruled that priests of *parochiae* could not legitimately sell property associated with their foundations.[455] Epaon 517, c. 12 ruled that no bishop could sell church property without the consent of the Metropolitan.[456]

A second key issue to be addressed was whether or on what terms lay patrons could found new churches. In Italy, the high density of wealthy

[450] Jones, LRE, 896.
[451] Jones, LRE, 896; Hillner, 'Titular Churches', 229; Pope Symmachus' **502** council at Rome, called to clear resolve tensions about the alienation of church property during the contested election of 499, ruled against alienation of church property and was careful to specify the rule applied both popes and to priests in charge of individual *tituli*: '*...ecclesiarum per omnes Romanae civitatis titulos qui sunt presbyteri vel quicumque fuerint... quicquam de iure titulorum vel ecclesiae superius praefatae*.' (Mommsen, MGH, *Auc. Ant. Xii*, 450; Jones, 'Church Finances', 89); also Symmachus, Ep.6.iv.14 Thiel, 690, trans. Hillner 'Titular Churches', 260.
[452] Hillner, 'Titular Churches', 229; Brown, *Eye*, 476. After the death of Pope Simplicius in **483** the Praetorian Prefect and representative of the Senate, Maximus Basilius, presented the clergy of Rome with an 'ultimatum', that no church lands could be alienated under any circumstances, '...for it is unjust and equal to sacrilege that, whatever somebody for the sake of his salvation and the peace of his should will have donated or securely bequeathed to the venerable church on behalf of the poor should be transferred to someone else.' Brown sees subsequent papal legislation (Symmachus below) as a rejection of the Senate's attempt to legislate on church property. (Cited in Symmachus Ep 6.III.7 Thiel, p. 687, trans. Hillner, 'Families, Patronage and Titular Churches of Rome', 249).
[453] Although, cf. *Statuta Ecclesiae Antiqua* below; Pontal, *Synoden*, 251 identifies canons on alienation of church property.
[454] Agde 506, c.7 (Munier, CCSL 148, 195f.).
[455] Epaon 517, c. 7 (MGH, concil. I, 20f).
[456] Ibid., 22.

Christian families around Rome made the issue particularly pertinent. Pope Gelasius (492-496) formulated rules for the founding of new churches, which were developed by Pope Symmachus (498-514).[457] Gelasius also determined that no bishop was to consecrate a church or chapel without verifying that it was properly endowed. In the Eastern Empire, Justinian enacted a similar proscription in the 538.[458] In Gaul, provincial councils determined the minimum level of wealth required in order to found a church. The council of Orleans 541 ruled that if anyone had or requested to have a diocesan church ('*diocessim*') on his estate he first had to alot to it sufficient lands and clergy to perform their offices there.[459]

A further area of complexity which had only started to be addressed at Chalcedon, and which Gallic bishops were effectively left to determine for themselves, was the question of how much control bishops should exercise over rural churches and 'private' religious foundations.[460] As we shall see in Chapters Four and Five, this growth area was to have a transformative effect on canon law in Gaul, since it effectively turned canons into a highly practical genre of 'law', which set the terms by which lay people could invest their wealth in new forms of religious property. In Orleans 511, c. 15 bishops asserted that everything that was presented to *parochiae* should, in accordance with '*antiquorum canonum statuta'*, be under the power of the bishop. They likely had in mind the above-mentioned canon from Antioch on use of church

[457] Gelasius' decretals on bishops' rights over churches: bishops may consecrate new churches with the Pope's consent; the church may not be dedicated to a non-believer (*Epist. Romanorum Pontificum genuinae*, I, Gelasius I no. 14 cc. 4, 25). Gelasius responded to queries regarding individual foundations. He affirmed in instances where the founder had supplied the *oratoria* or *basilica* sufficiently to cover lighting and the priest's stipend, promised to lay no claim upon the church other than to access it for worship, and the local bishop had accepted the endowment. Emphasis was on the donor's renunciation of rights, rather than the legal status of the foundation. (Outlined in S. Wood, *Proprietary*, 13-14; also A.H.M. Jones, 'Church Finances in the Fifth and Sixth Centuries', *The Journal of Theological Studies* vol. 11 (April, 1960), pp. 84 – 94 at 86 onwards).

[458] Thiel, *Ep. Rom. Pont.*, Gelasius, *ep.* 34, fr. 22; Pelagius I (*P.L. lxix.* 414-15); CI Nov. Justinian lxvii (538); Jones, 'Finances', 87.

[459] Orleans 541, c. 33 (MGH, concil. I, 94f.).

[460] On 'private churches' ('*Eigenkirchen'*) and the overall significance of these rules for canon law in Gaul, see below, ch.4&5.

property, which predated the acknowledgement of different degrees of ecclesiastical property.[461] Carpentras 527, held under Ostrogothic rule, responded to a complaint against bishops who had usurped things conferred upon *parochiae*, by ruling that where the church of the city (i.e. the episcopal church) was rich, things bequeathed to *parochiae* should be spent on the clergy and church repairs. But if the city church was poor, the bishop might take surplus revenues, leaving enough for the parochial clergy and repairs.[462] The extent to which these assertions of episcopal power over all property in the diocese reflected reality is doubtful. A later canon from Orleans 538 implicitly acknowledged as much, declaring ecclesiastical property within the cities was in the power of the bishops, whilst things left to *parochiae* could to be disposed of in accordance with the custom of each locality.[463]

There was a need to ensure the clerics staffing these 'quasi-private' churches met minimum disciplinary standards expected of priests. At the council of Clermont in 535, the local bishops attempted to assert their authority over parochial clergy: c. 4 ruled that powerful secular men were not permitted to keep 'unruly clerics' while c. 15 required that if priests or deacons did not belong to the canon, i.e. were not formally enrolled at a diocesan church, but instead lived in a villa or held services in an oratory, they were required to celebrate the major festivals with the bishop in his city, as were all the adult citizens of the diocese. Any who failed to do so were to be immediately excommunicated.[464]

Bishops also generated rules governing the allocation of ecclesiastical estates or revenues to support clerics enrolled with a church. Frequently, clerics would be given the *usufruct* of a church estate for their lifetime. These arrangements were made through grants of *precaria*.[465] Councils answered

[461] Orleans 511, c. 15 (MGH, concil. I, 6); Jones, 'Finances', 90.
[462] Carpentras 527 (just one canon) (Ibid., 41).
[463] Orleans 538, c. 5 '*Ne a potentibus saeculi clerici contra episcopus suos ullo modo erigantur*.' (ibid., 74f.).
[464] Clermont 535, c.4 (ibid., 67), c.15 (ibid., 69).
[465] Halfond, *Archaeology*, 121; P. Fouracre, *'The use of the term beneficium in Frankish sources; a society based on favours?', in W. Davies and P. Fouracre (eds.) The Languages of Gift in the Early Middle Ages* (Cambridge, 2010), 62 – 89, sees *precaria* as

questions on whether new bishops were bound to confirm grants made by their predecessor, or whether they had the right to revoke *precaria*.[466]

Gallic conciliar legislation was also notable for instituting its own defences for church property.[467] Canons from earlier contexts had focussed exclusively upon the internal division of property amongst the clergy and church institutions. These were primarily concerned with guarding 'institutional' property from misappropriation by clerics.[468] However, from the mid-to-late fifth century onwards, and particularly from the turn of the sixth, Gallic canons focussed upon the possibility of the laity despoiling church property. Vaison 442, c. 4.[469] declared that anyone who obstructed a will in which *oblationes* were bequeathed by the faithful, was to be treated as an unbeliever, that is, was to be excluded from the church.[470] In subsequent councils of the sixth century, excommunication was prescribed repeatedly for those who denuded churches of their wealth, either by challenging testamentary bequests or by stripping the church of property it already held. The *Statuta Ecclesiae Antiqua,* contained a prescription which condensed the act of Vaison.[471] Agde in 506, c. 26 imposed excommunication and an indemnity payment upon any priest who suppressed documents in order to allow an opponent of the church (perhaps in

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response to inalienability of church property and sign of growing church wealth; Lesne, Hist. Prop. I, 315; Reynolds, *Fiefs*, 78

[466] Orleans 511, c.23; reminders that holders of *precaria* did not own the property: Epaon 517, c. 18; Orleans 541, c. 18; Orleans 541, c. 34; Orleans 541,c. 36.

[467] S. Wood, *Proprietary*, 25; Pontal, *Synoden*, 250; Halfond, *Archaeology*, 112.

[468] **Antioch 341, c. 24**, also Canon Apost. 40b. *possessions of the Church should be guarded with care*; **Chalcedon 451, c. 25** *'... The revenues of the endowed Church shall be preserved undiminished by the steward of the Church.'*; ibid., **Chalcedon 451, c. 26**, *every church which had a bishop must also have a steward from its own clergy, who shall administer the property of the church*; **Hippo 393**, clerics ordained with no property but who take possession of property whilst holding office are held to have usurped it if they do not give it up for the church, CCSL 149, 110, ll. 306 – 11; **Carthage 421** which allowed bishops and clergy to dispose as they like of personal gifts and inheritances, but enacted that they must confer upon their church any lands which they bought, (Jones, LRE, 896); the ***Statuta Ecclesiae Antiqua*, cc. 31 and 32**, CCSL 148, pp. 169 & 174. See also Loening, *Geschichte des Deutschen Kirchenrechts* bk. 1 (Straßburg, 1878), 237 – 239.

[469] No antecedent has been identified by either Munier, CCSL 148, pp. 97-8. Hefele Vol. 3 §163; or Lesne, *Hist*. *Prop*., 5, n. 4.

[470] Munier, CCSL 148, 97f.

[471] *SEA* c. 86, Munier, CCSL 148, 180.

litigation) to obtain church property. It then prescribed the same punishments for those 'opponents' who tempted the clergy into such actions.[472] Orleans 538, c. 22 opposed anyone who obtained church property by force or judicial subterfuge (in addition to those who obstructed testamentary bequests to churches), declaring they were to be excluded until they made restitution.[473] Similar penalties were promulgated by episcopal councils throughout the sixth and seventh centuries.[474]

All this is to say, that the accident of political geography which meant that communities of bishops across Gaul were left to define and regulate church property largely by themselves led to a situation in which Gallic bishops were acknowledged as the legitimate authors of highly practical and consequential rules. Elsewhere, such rules were articulated by imperial law, papal decretals, or even the Senate. Merovingian rulers throughout the sixth century acknowledged this episcopal authority by requesting conciliar legitimation of their religious endowments, a fact which had significant knock-on consequences for canon-law in Gaul.[475]

Legislative councils were only the most obvious means by which Gallic bishops sought to reform canonical norms to suit their changing circumstances; compilation offered an alternative means to reshape legislation.[476] For example, the compilers of southern Gallic compilations originating from the final decades of the fifth century, the *Statuta Ecclesiae Antiqua*,[477] the so-called Second Council of Arles (hereafter, 'Arles II'),[478] 'The first collection of Angers 453',[479]

[472] Munier, CCSL 148, 204f.
[473] Orleans 538, c. 25 (22) (MGH, concil. I, 80f.).
[474] Orleans 541, c. 14; Paris 556-73, c. 1; Macon 581/3, c. 4; Clichy 626/7, c. 12.
[475] Ch.4.
[476] McKitterick, *History and Memory*, 254 suggests local collections in unique forms perhaps reflected local bishops tailoring canon law to their own needs.
[477] The *Statuta Ecclesiae Antiqua* a collection of 104 canons probably from earlier councils attributed to Arles in the first half of the sixth century, possibly compiled by Gennadius of Marseilles c.476-485. Key edition: Munier, *Les Statuta Ecclesiae Antiqua,* (Paris, 1960); also Maaßen, *Geschichte*, 383 – 390; Turner, 'Arles' 237; Mordek, *Kirchenrecht* 51.
[478] Munier, CCSL 148, 111-30; Kéry, *Collections*, 6; Mathisen,'The "Second Council of Arles" and the Spirit of Compilation and Codification in Late Roman Gaul', *Journal of*

and the *Quesnelliana*,[480] all 'altered and adapted' the contents of their collections in order to fit specific agendas.[481] Arles II interpolated two new rules to its cluster of canons from the council of Nicaea: one prevented married persons being ordained as priests (c.2), another refined the Nicene canon on returning schismatics. It added a distinction between those who had voluntarily denied their faith and those who had been forced to do so.[482]

The *Statuta* also sought to reformulate models of metropolitan and suffragan authority. The collection projected a version of episcopal office with notably limited powers. Bishops were required to treat their priests in a collegiate manner.[483] They were prohibited from 'holding' distant foundations,[484] and even had to obtain their clergy's written consent before they could alienate church property.[485] This procedure contrasted with those adopted elsewhere in Gaul. At Epaon, for example, bishops had to obtain the permission of the metropolitan (rather than his own presbyters) before alienating church property.[486] The *Statuta* also prohibited bishops from reading '*gentilium libros*', except where necessity demanded,[487] and discouraged bishops from involving themselves in disputes over secular estates.[488] These two regulations contrasted with the broader trend in Gallic legislation to define bishops as increasingly powerful temporal figures. On the basis of this contrast, Scholz has suggested the *Statuta* may represent evidence of some resistance of

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Early Christian Studies, Winter 1997, 510 - 553; Schäferdiek, *Kirche*, 28; ibid., 'Das sogenannte zweite Konzil von Arles und die älteste Kanonessammlung der arelatenser Kirche,' ZRG *KA* 71 (1985), pp. 1 — 19.

[479] Moore, *Spirit*, 48; Gaudemet, *Sources*, 86-89.

[480] Kéry, *Collections*, 27; Moore, *Spirit*, 50; Maaßen, *Geschichte*, 486-500; Turner, 'Arles and Rome', 237.

[481] Turner, 'Arles ', 239 identifies the SEA and Arles II as exhibiting a noticeably high degree of editorial selection, in contrast to most other Gallic collections.

[482] Arles II, cs. 2, 10 and 11 (Munier, CCSL 148, 115f.).

[483] c. 2 The bishop may sit higher than the priests in church, but in his house he must know that they are colleagues (Munier, CCSL 148, 166).

[484] SEA c. 1 (14) '*Ut episcopus non longe ab ecclesia hospitiolum habeat*.' (ibid.).

[485] SEA c.50 '*Irrita erit episcopi vel donatio vel venditio vel commutatio rei ecclesiasticae absque conniventia et subscriptione clericorum*.' (ibid., 174) See also below on correlations with Euric's legislation.

[486] Epaon, c. 12 (MGH, concil. I, 22).

[487] SEA c. 5 (CCSL 148, p.167).

[488] SEA c. 8 (ibid.).

the trend towards 'aristocratic bishops'.[489] Sixth-century Gaul might have looked very different had this version of episcopal authority (generated under Euric) become the dominant model in Gaul.

While the production of new legislation became localised, it is essential to point out that bishops still considered themselves part of an empire-wide *ecclesia*, with a theoretically unified legal culture. Furthermore, 'canon law' in Gaul retained a degree of coherence across the new political divides; a fact often obscured by the focus upon the *Landeskirche*. The most obvious manifestation of this persistent unity was the continued respect for opinions from the bishop of Rome.[490] Bishops in each region continued to acknowledge papal opinions on canonical regulations (as well as theology).[491] There are instances of individual decretals being circulated or cited in sixth-century Gaul. Gaudemet's colleagues, Champagne and Szramkiewicz, pointed out that Clermont 535, c. 2 on episcopal elections, bears a close resemblance to Pope Symmachus' letter to Caesarius of Arles from 513, potential evidence that papal decretals were exchanged between the Frankish and Ostrogothic spheres in the 520s.[492]

There are also signs that Gallic bishops circulated their new conciliar canons across political borders. In a letter to his colleague Victorinus of Grenoble regarding whether or not the churches of heretics could be returned to the orthodox community, Avitus of Vienne appeared to refute a recent canon from the Frankish council of Orleans 511, which he envisioned inhabitants of the Burgundian realm citing as the basis for permitting such returns.[493] Likewise, in a letter addressed to bishops of Ostrogothic-occupied Provence, assembled for the trial of Contumeliosus of Riez in 533 (see below), Caesarius of Arles

[489] Scholz, *Merowinger*, 29.
[490] Cf. ch.5.C. Loening et al. perceived a definite organisational split from Rome.
[491] Ch.5 and Appendix 2.
[492] Champagne and Szramkiewicz, 'Recherches', 33f.
[493] Avitus, Ep. 7 c.516/17. The relevant canon was Orleans 511, c. 10. Shanzer and Wood, *Avitus*, 295 – 305. Avitus objected to the return of heretical churches by those who acted 'from self evident reason' or 'canonical books'. Discussed in more detail below.

confirmed his support for an entirely new canonical regulation issued less than a year earlier in the Frankish kingdom.[494] The Council of Orleans 533 was attended by bishop from the Frankish realms only and was convoked by the kings Childebert, Chlothar and Theudebert;[495] nevertheless, Caesarius received, accepted and propagated its regulation within months.

These examples of rapid exchange between successor kingdoms and the persistence of a broader conception of the ecumenical *ecclesia* expose the limitations of the concept of individual *Landeskirchen*, at least for the purposes of analysing ecclesiastical legislation. While political fragmentation confronted local episcopates with diverse challenges and forced them to start legislating as discrete communities, their understanding of '*canones'* was still intertwined with the idea of an empire-wide '*ecclesia'* determining its disciplinary standards collectively on an ecumenical basis. Ideological and institutional attitudes had yet to catch up with the fragmented political reality. Canons would be transformed in the process.

Canons aim to 'control' the laity

In fifth- and sixth-century Gaul there was a proliferation of canonical legislation attempting to regulate the laity. This phenomenon appears to have been driven partly by a fear that imperial law was failing to uphold standards of morality. However, it was also the result of a process in which long-standing aspects of the clergy's pastoral responsibilities were codified in canonical regulations. This seemingly simple development transformed canons into a major and pervasive instrument of the clergy's ministry.

As we touched on in chapter one, excommunication and the administration of penance were relatively loosely defined in disciplinary canons, whilst imperial law provided the key mechanisms for suppressing extreme social or doctrinal dissent. However, communities in fifth-century Gaul started to lose

[494] Klingshirn, *Caesarius*, 113, n. 94 identifies the link with Orleans 533, c.15 that permission to offer gifts for the souls of executed criminals was not to be denied. This canon appears to have been the first issued on the subject.
[495] Halfond, *Archaeology*, 226.

access to new imperial law just as ongoing Christianization strengthened the need for answers on the standards of behaviour expected from lay congregations. Answers were formulated, initially, via appeals to the bishop of Rome, when possible;[496] above all, however, they were articulated in conciliar canons. Canons identified the boundaries of the penitential system, i.e. who could engage in penance and what costs, rights and obligations were associated with it.[497] As penance became more widespread as a practice and as it came to be regulated increasingly by canons, so the latter grew as a normative system with influence over the daily lives of society at large.

Traditional histories saw this proliferation of regulations regarding penance in fifth and sixth centuries as a low point between the raw vigour of early Christian piety and the sophisticated, elaborate penitential systems which emerged from the reforms of later centuries.[498] The disjuncture between ecclesiastics' insistence upon rigid, high standards on the one hand versus the apparent, new-found moral apathy of the Christian population on the other led scholars, such as Vogel, to conclude the 'penitential system' was essentially unworkable and, consequently, virtually abandoned.[499] However, the proliferation of rules surrounding penance looks less strange when contextualised against the broader trend of bishops adapting their canonical rules to fulfil a range of new social and institutional functions.

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[496] E.g. Innocent to Exusperius of Rouen J. 675: penance and communion should be available to the dying; Innocent to Decentius of Gubbio (J. 701) on whether public penance could be committed before Easter week.

[497] See below for sixth century councils. Also, **Orange 441**, c. 1 In the absence of a bishop priests may give mortally ill heretics the benediction, c.5 on asylum (see below), cs. 18 Gospel to be read to catechumens, 19 catechumens cannot enter the baptistery (before baptism); **Vaison 442**, c. 2 oblations may be received for penitents who die unexpectedly without communion; **Arles II**, c. 21 female penitents who remarry after the death of their husband shall be excommunicated (potentially a reference to penitents as committed ascetics). On Caesarius' approach to penance G. Ladner, *The Idea of Reform* (Cambridge, MA, 1959), 415ff.

[498] G. Ladner, *The Idea of Reform* (Cambridge, MA, 1959), 415 Caesarius' emphasis on discipline was a response to 'the progressive barbarization of the West.'; R. Meens, 'The Historiography of Early Medieval Penance', in A. Fiery (ed.) *A New History of Penance* (Boston, 2008), 73 - 97.

[499] Uhalde, 'Administration', 99-101 with literature.

Starting in the mid-fifth century, there was a move to reinforce imperial laws with additional penitential requirements. It was not enough for an individual to be punished by 'secular' conviction, he or she also had to make amends with penance. Tours 461 required that there be no intercourse with murderers until they had atoned for their crime by confession and penance. It was restated at Agde 506.[500] In the sixth century, canons also began to specify that penance was due even where an individual had been acquitted by a secular judge. Epaon 517, c. 31 declared that murderers who had escaped secular justice were to do penance as had been declared at Ancyra.[501] (Ancyra c. 22 had declared wilful murderers were to remain *substrati*). Later in the sixth century, Orleans 541, c. 28 declared that anyone who had been convicted of murder and subsequently freed by a prince or parents of the victim still had to do suitable penance determined by the bishop. The growth of penance therefore helps to mark out the growing preoccupation of ecclesiastical legislators with reinforcing the basic foundation of criminal law by means of their own written prescriptions. [502]

In fifth- and sixth-century Gaul, conciliar canons were used to define and refine the key 'control mechanisms' by which the ordained priests shaped the behaviour of the laity, through penance and excommunication, to an unprecedented degree. Excommunication became a much graver sentence. Whilst the threat of punitive exclusion had been mentioned in Paul's epistle, exclusion was 'therapeutic'.[503] In the *Didascalia*, bishop and church community appeared to share the rite and responsibility of ejecting and then readmitting repentant sinners after the latter had undergone a period of fasting. The exclusion envisioned was from the liturgy only, and the rest of the

[500] Tours 461, c. 7 (= Agde 506, c.37) (Munier, CCSL 148, 146).
[501] Epaon 517, c.31 (MGH, concil. I, 26).
[502] K. Uhalde, *Expectations* 10, notes bishops turned the prevention of *calumnia* (including: false witness statements, spurious litigation) into a 'religious virtue'. (Addressed in ch.4 below).
[503] (Hinschius IV p. 745 n. 1.); in 2 Thes. 3.14-15, Paul had said of those who disobeyed his strictures: 'have no company with him that he may be ashamed. Yet count him not as an enemy, but admonish him as a brother.' (Vodola, *Excommunication in the Middle Ages* (Berkeley, 1986), 7).

congregation, following the spirit of 2 Thessalonians, were envisioned as performing a palliative role for the excommunicates.[504] The same was broadly true for most fourth-century councils.[505] The emphasis in these canons was on separating the laity from those who worshipped incorrectly, rather than defining excommunication as total social exclusion, perhaps because they were formulated in contexts where non-Christian, public religious observance was still strong and alternative Christian sects vied for prominence within the Empire.[506]

In post-imperial Gaul by contrast, exclusion was increasingly regarded as punitive rather than remedial, and the idea of excommunication as total exclusion from society came to be fully articulated. The most striking example comes from a small council in the second half of the sixth century, but nevertheless worth mentioning here, since it caps a trajectory started in the fifth. Tours 567, c. 24 was aimed against despoilers of church property (it specified people who took advantage of civil wars to confiscate properties of the church). If anyone misappropriated properties of the bishop, agents of the church, abbots, monasteries or priests and failed to return the property after three admonitions, all the priests, bishops and clergy were to assemble together and (because they had no recourse to arms),[507] were to sing Psalm 108, so that the malediction which befell Judas would fall upon the offender, and so that he

[504] (ibid., n. 40). Somewhat confusingly, the *Didascalia* also provided the first formulation of the idea that those who consorted with excommunicates were to be disciplined similarly (Didascalia, c. 15, A. Stewart-Sykes, *The Didascalia Apostolorum* (Turnhout, 2009)). This not only conflicted with its exhortation for congregants to comfort repentant sinners, but also with its earlier rules, which stated that one person's sins do not affect another. (Didascalia, c. 6, *Ibid*.)

[505] Antioch 341, in c. 2, excommunicated priests who consorted with excommunicates and encouraged laymen to avoid such contact. Specifically, it forbad anyone from praying privately with those who celebrated the Eucharist in an irregular manner. (Hefele, II, §46, p. 67) The Apostolic Canons excommunicated laymen who prayed with excommunicates. (Apostolic Canons c. 9 – 12 incl.; Vodola, *Excommunication*, 8; Kober, *Kirchenbann*, 382). See also, H. Ohme, 'Sources of the Greek Canon Law to the Quinisext Council (691/2): Councils and Church Fathers', in W. Hartmann and K. Pennington (eds.)*, The History of Byzantine and Eastern Canon Law to 1500* (Washington, 2012), 24 — 115, at 28.

[506] Hinschius, IV., 704; Kober, *Kirchenbann*, 302.

[507] Tours 567, c. 25 (24): *'... et quia arma nobis non sunt...*' (MGH, concil. I, 134).

would die, not only excommunicate but also anathema.[508] This was an elaborate and undeniably punitive measure, a world away from the fraternal correction envisioned by earlier authorities.

The social catastrophes of the fifth century might have contributed to this hardening of attitudes. Angers 453 c.4 ruled that any cleric who assisted in delivering over their towns to the enemy would not only be excommunicated, but that it was forbidden to eat with them. (This also implied that excommunication did not at that point automatically mean total social exclusion).[509] As we shall see, under certain Merovingian kings, excommunication was turned into a public criminal sanction.[510] A crucial step in this process was Childebert II's 596 decree which banned those guilty of incest from the royal palace and decreed their possessions were to be confiscated.[511]

Excommunication also became more sophisticated. The term *'excommunicare*', was only found relatively late, possibly at the Council of Carthage in 390, but certainly by the councils of Toledo 397-400 and Riez 439. '*Excommunicatio'* is first found in 'Arles II' in the acts of Tours 461 (which also specified the person was to be excluded from all intercourse with the faithful and not just from the liturgy).[512] Gallic canons not infrequently added specific

[508] *ibid. '...ut veniat super eum illa maledictio, quae super Iudam venit, qui, dum loculos faceret, subtrahebat pauperum alimenta; ut non solum excommunis, sed etiam anathema moriatur et coelesti gladio feriatur, qui in dispectu Dei et ecclesiae et pontificum in hac perversionem praesumpsit assurgere. Illud etiam annecti placuit, ut, qui de fratribus ad dandum solatium venire pro certa infirmitatis necessitate non potuerit, abbates et presbyteros in vice sua transmittat. Qui si preter certam infirmitatis excusationem commonitus aut venire aut transmittere noluerit, remotum se a fratrum caritate esse cognuscat. Nam, quod quidem non credimus, si quis contra decreta nostra tali temeratori communicare praesumpserit, in se causam excommunicationis transformet et cum eodem se a caritate omnium sacerdotum cognoscat esse remotum.*'
[509] Munier, CCSL 148, 137-38.
[510] Vodola, *Excommunication*, 12 n. 59; E. Eichmann, *Acht und Bann im Reichsrecht des Mittelalters* (Paderborn, 1909) 5 - 26; Lea, "Excommunication" 313 – 42; T. P. Oakley, "The cooperation of Mediaeval Penance and Secular Law," Speculum 7 (1932) 515 - 24; *ibid*, English Penitential Discipline and Anglo-Saxon Law in Their Joint Influence (New York, 1923) 167 - 96.
[511] Ibid.
[512] Jaser, *Ecclesia maledicens*, 38ff.

timeframes or exemptions to their exclusion penalties, for sixth months,[513] two years,[514] or permanently.[515]

The penalty of exclusion was refined yet further by a series of canons which made it possible for bishops and priests to undergo '*excommunicatio minor*', exclusion from the liturgy, without losing their ordained status. This was in spite of the longstanding tradition that those who had undergone penance could not be admitted to the priesthood, a concept which was continued into the Merovingian era.[516] Orleans 511 c. 12 allowed deacons and presbyters to perform baptisms even after penance, if the need arose.[517] A number of *canones* permitted clerics to retain office without making any qualification: Orange 441 c. 4 declared penance was not to be denied to clerics who requested it.[518] Agde 506 c. 2 specified disobedient clerics who failed to attend the church of the bishop were to be relegated to the *peregrina communio* until they complied. Orleans 511 c. 7, which forbad abbots, prebyters, deacons or anyone of the religious profession from soliciting gifts from the powerful (see above), had declared that those who transgressed were to be deprived of their office until they had done penance. Orleans 538, c. 22 (19) even reminded bishops to pay a stipend to clerics while they were performing penance.[519] As Uhalde has pointed out, in sixth-century Gaul, even bishops could undergo penance and retain their office, as long as the penance was performed in private.[520]

These *canones* represent another stage in the formalisation of excommunication as a practical control mechanism administered exclusively by a clerical elite. Bishops gave serious consideration to the practicalities of

[513] Macon 581/3, c.1 (MGH, concil. I, 156).
[514] Epaon 517, c. 34 (ibid., 27).
[515] Tours 567, c. 25 above.
[516] Canons preventing a former penitent from being ordained: **Nicaea 325** c. 13; **Arles II** c. 25; **Agde 506** c. 43; **Epaon 517** c. 3 penitents prohibited along with bigamists and men who marry widows; ***SEA*** c. 84 – 85; **Arles 524** c. 3; Caesarius Serm. 1.14; **Orleans 538** c. 6 — added those physically or publicly possessed. See Uhalde, 'Administration', 109, n. 43.
[517] Orleans 511, c. 12 (MGH, concil. I, 5).
[518] Munier, CCSL 148, 79.
[519] MGH, concil. I, 80.
[520] Uhalde, 'Administration', 10.

exclusion and envisioned it as their equivalent of secular arms. Since excommunication was *the* key tool for enforcing *canones*, this process of formalisation arguably suggests the entire system of canon law was evolving.

It is important to recognise that whilst clergy and bishops were always central in determining who and how people should be excluded from church communities, it did not become an exclusively episcopal power until the fifth century.[521] In the third century, both bishop and congregation appear to have played a role in the ritual exclusion of a penitents from the community in order for the bishop to pardon and readmit them.[522] Certainly, Augustine's letters imply the practice had become a run-of-the-mill clerical control mechanism by the first quarter of the fifth century. However, the complaints levelled against Hilary of Arles, that he had excommunicated people too readily, perhaps indicate exercise of the mechanism was contested. By the sixth century, canonical regulations imply the episcopate were freely excommunicating individuals on a regular basis, often for quite minor acts. Agde 506, c. 3 ruled that bishops who excommunicated someone who was innocent, had only committed a very minor fault and were to be corrected by neighbouring bishops. If he did not comply, he was to be excommunicated and denied communion at the next council.[523] Orleans 549, c. 2 ruled that no bishop should excommunicate an orthodox man for unimportant causes.[524]

Once conciliar canons became the primary tool for defining penance and excommunication, i.e. restrictive aspects of lay piety, it was a short step to canons being regarded as legislation which itself possessed the authority to bind the laity. Basic levels of participation expected from the laity were prescribed (again) by canonical regulations and punishments. Agde 506 agreed that, on Sundays, all laymen had to be present at mass and must not leave until the bishop had delivered his blessing. Those who failed to attend or left early

[521] See Vodola, *Excommunication*, 5.
[522] ibid.
[523] Munier CCSL 148, 193.
[524] MGH concil. I, 101.

would be publicly censured by the bishop.[525] Clearly, the custom of attending a Eucharist service on Sundays was a fundamental element of Christian religious observance. It is well evidenced in early compilations of norms and customs.[526] However, there was very little precedent for lay religiosity being demanded via an ecclesiastical canon. Elvira provides the only potential canonical antecedent. It ruled that anyone who had failed to attend church for three Sundays in a row was to be 'kept out' for a short period in order that his punishment was made public.[527]

Gallic conciliar *acta* also started to legislate in more detail regarding where and how the laity worshipped. This was a response to the continued spread of Christianity outwards from urban centres, and also to the increasing tendency for rich landowners to build or endow quasi-private churches. Councils required the laity to attend divine service in either a city or a parochial church, that is, a rural church under the direct control of the bishop rather than a local oratory, at Easter, Christmas, Epiphany, the Ascension, Pentecost, the nativity of St John and other great festivals.[528] The same principle was also articulated at Epaon 517, which ruled that all high-born laymen were required to request benediction from the bishop at Easter and Christmas even if they were in a strange diocese.[529] Where previously *canones* might determine the contents of the liturgy, increasingly they addressed the terms on which the laity attended, and the repercussions should they fail to do so.[530] Orleans 511 also

[525] Agde 506, c. 47, (Munier, CCSL 148, 212); repeated at Orleans 511 c. 26, (MGH, concil. I, 8); Hinschius, IV, p.803 identifies Agde 506's punishment of public censure by the bishop as an innovation.
[526] E.g. as Chapter 14 of the *Didascalia*, *Didascalia Apostolorum*, ed. and trans. R. H. Connolly (Oxford, 1929).
[527] H. Bruns, *Canones Apostolorum et Conciliorum Veterum Selecti, Saeculorum IV. V. VI. VII.* (Berlin, 1839), ch. 1. On Elvira as the sole antecedent see, Hinschius, *Kirchenrecht*, IV, 288.
[528] Agde 506 c. 21 (Munier, CCSL 148, 202f.).
[529] Epaon 517 c. 35 (MGH, concil. I, 27).
[530] Hess, *Development*, 39ff.; S. Wessel, 'The Formation of Ecclesiastical Law in the Early Church', in W. Hartmann and K. Pennington (eds.)*, The History of Byzantine and Eastern Canon Law to 1500* (Washington, 2012), 1 — 23.

required three days fasting before the feast of Ascension and that *servi* and *ancellae* be freed from work on those days.[531]

The Gallic conciliar acts effectively turned customs, albeit fundamental ones, into mandatory rules. The extent to which these norms represented or promoted a change in religious behaviour is less significant than the fact that by turning conciliar *acta* to such purposes, Gallic bishops were transforming the idea of what *canones* were. They were no longer 'measuring sticks' against which the spiritual vanguard could determine the level of their own voluntary piety, but compulsory norms for all strata of society, which carried increasingly draconian and sophisticated punishments for transgressors. The fact that canons were simultaneously being used to reaffirm old imperial laws (see below) meant there were two mutually-supporting impulses towards canons becoming all-encompassing legislation.

3.B The function of canon law

One relatively notable thing about Gallic canonical regulations from the fifth and sixth centuries was the extent to which they reaffirmed norms articulated in imperial laws, and their habit of reaffirming imperial edicts in their *acta*. [532] Likewise, canon-law compilations from the sixth and seventh centuries often contained within them groups of imperial edicts ranging from short recensions of the Sirmondian Constitutions to the entire Breviary of

[531] Orleans 511, c. 27 (MGH concil. I, 8).

[532] Ch.2 on Vaison 442, c.9; Riez 439, c.10 amending CTh 5.9.2 on foundlings. Vessey, 'Origins', 197 highlighted this phenomenon of councils citing imperial laws in Gallic conciliar *acta* at the end of the sixth century, esp. Macon 581/3 and 585 – see following chapters; Fournier-Le Bras, *Histoire des collections canoniques en Occident depuis le Fausses Décretales jusqu'au Décret de Gratien*, 2Bde. (Paris, 1931-32), 46; E. J. Jonkers, 'Application of Roman Law by Councils in the Sixth Century,' in *Tijdschrift voor Rechtsgeschiedenis* 20 (1952), 340 – 343; Halfond, *Archaeology*, 9f. acknowledges that secular and canonical law were 'close' in the Merovingian era and that 'some tension' existed between them, but does not question the novelty or reason for this crossover; Hannig, *Consensus*, 67f. on the shared '*si quis*' formula; Liebs, *Jurisprudenz*, 101 and 280, lists imperial-law influences in Gallic concilia *acta*.

Alaric.[533] The canonical legislation requiring penance for criminal-law offences outlined above represents another manifestation of this impulse. [534] Explanations for why this phenomenon occurred tend to focus upon the 'senatorial' background of the episcopate, which supposedly inclined them to produce imperial-style legislation, and a general anxiety that imperial law was becoming less effective as a binding normative system.[535] (Conversely, it has been suggested that the 'cessation' of canonical legislation in the Eastern Empire from the mid-fifth to the seventh century resulted from Eastern Emperors legislating extensively on ecclesiastical matters).[536] However, closer attention to the parallels and overlaps between the different genres of legislation can shed a little more light on the process at work.

As we saw in Chapter One, bishops and church communities had become increasingly reliant upon the imperial legislative process from the latter fourth century onwards (a trend flagged by the rise of the *defensor ecclesiae*). Bishops and councils had solicited and cited various types of imperial law. In one sense, the citation of imperial edicts in Gallic councils was merely a continuation of this trend. This is particularly true for those instances where post-imperial councils restated 'imperial-law' norms which articulated principles of clerical or monastic

[533] See below.
[534] Above, p. 138.
[535] Ubl, *Inzestverbot*, draws together several strands of the *Bischofsherrschaft* literature which explained shifting patterns of episcopal legislation in post-imperial Gaul. He described bishops as attempting to 'stabilize' Roman law in the fifth century West by instructing it to be observed by the clergy and by developing exclusion as an enforcement mechanism (pp.28-30; see below). Following Heinzelmann and Jussen, he argued that bishops became steeped in the knowledge of Roman law, partly, because from the late fifth century the imperial aristocracy started to occupy episcopal office in lieu of taking supra-regional imperial positions; partly also, because emperors since Constantine had involved bishops in the administration of the imperial administration. Bishops became responsible for 1) jurisdiction over clergy; 2) arbitration for laity; 3) emancipation in churches; 4) overseeing prisoners; 5) protection for poor, widows and orphans; 6) guaranteeing church asylum. According to Ubl, the legal knowledge introduced with the aristocratic influx, in combination with the expanded opportunities for episcopal intercession in the chaotic fifth century (see, ns.3 &4 citing Van Dam and Baumgart), explain why sixth-century Gallic councils produced a quantity of disciplinary legislation heretofore unseen. Previous councils of the fourth-century had largely addressed dogmatic issues, whereas the Gallic councils were concerned in the sixth with regulating legal problems and thereby created an important legal body for the discipline of the ecclesiastical hierarchy. (pp.115-17).
[536] Wagschal, *Law*, 41 cites literature but remains agnostic himself.

discipline or organization. For example, the bishops at Agde 506 confirmed an imperial law on the minimum age at which a nun could take the veil, which had been omitted from Alaric's Breviary six months beforehand. [537] However, it also represented a new step forward in the claims councils were making about their own rule-making and enforcing abilities. Bishops did not merely refer to imperial edicts in their councils, they restated and amended them with their own *acta*, then subscribed and circulated copies of their decision-making process.

The steady rise of churches as institutions of fundamental social importance, driven by the continued Christianization of society, likely added urgency to this need to replicate and reaffirm privileges previously conferred by imperial law. *Manumissio in ecclesia* was one such imperial legal mechanism which became evermore important as increasing numbers of individuals sought to exploit the church foundations to bestow or gain their liberty.[538] The subject was tackled at Orange 441, in Arles II and at Agde 506, all of which imposed ecclesiastical penalties for anyone who attempted to violate legally binding manumissions made in the church.[539]

However, Gallic councils' foray into subjects traditionally covered by imperial legislation was not merely an attempt to affirm norms beneficial to the clergy. For one thing, councils reaffirmed laws which superficially seemed detrimental to their interests. Orleans 511, c. 6, that people could not be excommunicated for bringing legitimate claims against a bishop, could be seen as reaffirming the mid-fifth century imperial laws which limited ecclesiastical

[537] Agde 506, c.19 set a minimum age for the veiling of nuns; See Klingshirn, *Making*, 103; Schäferdiek, *Kirche*, 61.

[538] Ch.4.

[539] **Orange 441**, c.6(7): '*In ecclesia manumissos, uel per testamentum ecclesiae commendatos si quis in seruitutem uel obsequium uel ad colonariam conditionem imprimere tentauerit, animaduersione ecclesiastica coercebitur.'* (Munier, CCSL 148, ; **Arles II**, c.33(32) '*Si quis per testamentum manumissum in seruitute uel obsequium uel in colonaria condicione inpraemere temptauerit, animaduersionem ecclesiastica arceatur. c. 34 (33): Si quis in ecclesia manumissum crediderit ingrati titulo reuocandum, non aliter liceat nisi eum gestis apud acta municipum reum esse ante probauerit.'*(ibid., 121); **Agde 506**, c. 29 '*Libertos legitime a dominis suis factos ecclesia, si necessitas exegerit, tueatur. Quos si quis ante audientiam aut peruadere aut spoliare praesumpserit, ab ecclesia repellatur*.'(ibid., 206); Esders, *Formierung*, 34 – 36 .

legal privilege and ruled that priests had to answer both criminal and civil charges.[540] A clearer affirmation of this imperial law was made in Epaon, c. 24, which ruled that laymen could level accusations against clerics of every rank, if they spoke the truth.[541] Likewise, Orleans 511, c. 7, mirrored imperial edicts which had curtailed the ability of priests, ex-priests and celibates to solicit gifts and legacies.[542]

These canons might represent 'gestures of compromise' by the episcopate in their new polities.[543] However, they also replicated imperial laws solicited by the disinherited, who sought to take action against clerics who had solicited the bequests from their deceased relatives.[544] These canons suggest therefore that Gallic councils started to act as the key fora through which any and all norms pertaining to religion and the church could be discussed and affirmed. The process of successor-kingdom formation, in which new political and legal settlements were required (even if they followed pre-existing formulas), thus encouraged councils to elide canonical- and law-making functions. Crucially, however, this tendency was not entirely contingent upon the presence of successor kings. Hilary of Arles had begun to engage with it even in the 430s/40s.

Asylum

It is easier to trace the gradual transition church councils made from reaffirming existing 'legal' norms to legislating in a proactive and innovative manner, by focussing upon a single legislative subject. The fact that canonical

[540] Nov. Val. 35.1 (452) (= Brev. 12) Lengthy, but essentially confirmed that bishops and priests had to answer both civil and criminal charges brought against them in court (they were allowed to send a procurator to represent them); cf. Chalcedon 451, c.6 (L'Huillier, *Church*, 125-31 with commentary), the religion of anyone bringing a complaint against bishops must not be taken into account.
[541] MGH concil. I, 24.
[542] Ibid., 4; cf. CTh 16.2.20 (370), Valentinian and Valens. N.B. subsequently altered, e.g. by Nov. Marc. 5.1 (455).
[543] Halfond, *Archaeology*, 112 referring to Orleans 511, c.6.
[544] Ch.1, e.g. CTh 16.2.20 (370), 27 (390), 28 (390); CTh 5.3.1 (434); Nov. Marc. 5.2 (455), which all restricted the ability of churchmen to solicit gifts and donations.

legislation was issued on the subject has been well observed.[545] Stefan Esders focussed upon asylum as a key to understanding the transition from late-antique to early medieval legal systems and observed that, in the West, the institution came to be defined by ecclesiastical legislation. He highlighted, in particular, the formulation of asylum at Macon 585 as a crucial point of transition in both legal and historical paradigm shifts.[546] However, perhaps because it was an ecclesiastical legal institution with older pagan and Jewish roots, few have addressed directly the fact that ecclesiastical legislation was doing something new by defining this institution. While an early and isolated reference to those who '*ad misericordiam ecclesiae confugiant*' was made in Serdica, c.8 (which restricted the ability of bishops to travel to the imperial court, but made an exception for cases of honourable intercession), as we saw in chapter one, the institution was overwhelmingly defined via imperial edict.[547]

In fifth-century Gaul, Honorius and Valentinian III's 'devolution legislation' had targeted asylum as a key institution for allowing southern Gallic bishops to restore order.[548] Hilary of Arles' councils, which appropriated many aims of the 'devolution legislation', were the first church councils to address the subject: Orange 441 c. 5 declared that If any one had taken refuge in a church he would not be given up, but sheltered.[549] Sometime later in the century, Arles II contained a similar statement in favour of sanctuary, but also added a

[545] Gaudemet, *L'Église*, 282-87; Loening, *Geschichte*, 563ff.
[546] Esders, 'Rechtsdenken', esp. 108 onwards.
[547] Loening, *Geschichte* I, 319-20; Hess, *Development*, 204 onwards and 217-18; Rapp, *Bishops*, pp. 253 – 260; In the 390s, edicts addressed the practical limits of ecclesiastical asylum on a case by case basis; i.e. prevent it being abused by debtors etc.: **CTh 9.45.1** (392), The first edict on ecclesiastical asylum: that public debtors will be removed from churches or payment sought from the clerics; **9.45.4** (431) (Brev. 9.34.1), affirms the validity of asylum and specifies the practicalities of it: applies to church buildings, no arms in church, e.g. **CTh 9.45.2** (397). Laws from the second quarter of the fifth century defined church sanctuary in a more positive sense, detailing the numerous practicalities, e.g. **Sirm. 19** (419); **CTh 9.45.3** (431) (=Brev. 9.34.1). The most extensive positive definition of asylum **CTh 9.45.3** (431) (= Brev. 9.34.1 re-promulgated in 507).
[548] Chapter Two.
[549] Munier CCSL 148, 79; cf. Carthage 399, (Munier, CCSL 149, 194).

punishment of excommunication for those who did not respect it.[550] These canons reminded clerics of their obligations to provide sanctuary.

The 'Frankish' council Orleans 511, by contrast, offered an extensive definition of the practicalities of church asylum and made substantive innovations. It confirmed the validity of church asylum for murderers, adulterers and thieves in accordance with Roman and canonical law ('...*quod ecclesiastici canones decrevunt et lex Romana constituit*...').[551] It then amended the institution as defined by imperial law, the same definition which had been re-promulgated in Alaric II's *Breviary* four years earlier. Orleans 511, c. 1 specified that suspects could not be removed from the church without their pursuers first swearing an oath on the Gospels that they should be free from all punishments in return for just satisfaction from those seeking refuge. The use of an oath on the gospel as surety and the idea of reparation had no precedent in imperial laws on sanctuary.[552] Furthermore, Orleans 511, c.2, which addressed those who fled to a church having abducted a girl (*raptus*), set out a method of resolution resembling a *wergeld* payment: those guilty of *raptus* were to be subjected to slavery, but could repurchase their freedom; they were also to afford satisfaction to the father of the girl in question.[553]

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[550] Arles II, c. 30(29) (Munier CCSL 148, 120).

[551] '*De homicidis, adulteris et furibus, si ad ecclesiam confugerint, id constituimus observandum, quod, ecclesiastici canones decreverunt et lex Romana constituit: ut ab ecclesiae atriis vel domum ecclesiae vel domum episcopi eos abstrahi omnino non liceat; sed aliter consignari, nisi ad evangelia datis sacramentis de morte, de debilitate et omni poenarum genere sint securi, ita ut ei, cui reus fuerit, criminosus de satisfactione conveniat. Quod si sacramenta sua quis convictus fuerit violasse, reus periurii non solum a communione ecclesiae vel omnium clericorum, verum etiam a catholicorum convivio separetur. Quod si is, cui reus est, noluerit sibi intentione faciente conponi et ipse reus de ecclesia actus timore discesserit, ab ecclesia vel clericis non quaeratur.*' (MGH, concil. I, 2f.); cf. CTh 9.45.4 (= Brev.

[552] There are no such oaths in CTh 9.45.4-5, the two antecedents; Esders, 'Rechtsdenken' 109, emphasized the novelty of Orleans' treatment of the oath-swearing; see ch.5 on oaths and '*loci credibilis*'.

[553] Orleans 511, c. 3 (MGH, concil. I, 3) '*De raptoribus autem id custodiendum esse censuimus, ut, si ad ecclesiam raptor cum rapta confugerit et femina ipsa violentiam pertulisse constiterit, statim liberetur de potestate raptoris et raptor mortis vel poenarum inpunitate concessa aut serviendi conditione subiectus sit aut redimendi se liberam habeat facultatem. Sin vero quae rapitur patrem habere constiterit et puella raptori aut rapienda aut rapta consenserit, potestati patris excusata reddatur et raptor a patre superioris conditionis satisfactione teneatur obnoxius*.'

This punishment is notable for two reasons. Firstly, it is manifestly non-ecclesiastical. Neither excommunication nor penance came into it. Instead, the church council used its canon to define what would normally be considered a criminal-law sanction. [554] Secondly, the mechanism it offered was unprecedented under imperial law, according to which *raptus* was a capital offence. There was no notion in imperial law that a perpetrator could buy their way out of punishment. Neither was there any trace of an idea that the girl's father should be offered reparation by the condemned. On the contrary, imperial laws prohibited extra-judicial settlements for cases of rape and prescribed a tariff of rewards for slaves who reported their masters attempting to make one.[555] These canons were not simply restating Roman law, they were also amending it to fit with Frankish modes of justice, which made common use of wergeld payments and promissory oaths and lacked the notion of crime and punishment in their earliest iterations.[556]

Avitus' council of Epaon in the Burgundian kingdom likewise offered a canonical definition of church asylum. His canon focussed upon slaves seeking asylum from a 'heinous charge' ('...*reatu atrociore*...'). There was a slight variation from the procedure agreed in the Frankish kingdom. Clergy could only seek oaths from the pursuers to protect the slave from corporal punishment or death. They could not gain security against the master putting the slave to some demeaning form of work.[557]

Gallic churchmen in this way moved beyond reaffirming a longstanding legal institution and started using their ecclesiastical canons to make detailed and deliberate changes to existing imperial law. Once conciliar legislation was established as the appropriate medium through which the terms of asylum

[554] CTh 9.24.1 both ravisher and ravished were considered criminals; nurses who colluded with ravishers were to have molten lead poured down their throat; there was no chance of appeal against convictions for rape; 9.24.2 capital punishment for ravishers, if slave status they were to be burned to death.
[555] CTh 9.24.1-3.
[556] Ullmann, 'Public Welfare', 15 characterized this canon as an attempt to 'eliminate Teutonic principles', i.e. blood-feud.
[557] Epaon 517, c. 39 '*Servus reatu atrociore culpabilis si ad ecclesiam confugerit, a corporalibus tantum suppliciis excusetur. De capillis vero vel quocumque opere placuit dominis iuramenta non exegi*.'

ought to be defined, a significant amount of institutional or ideological authority was transferred to the episcopate. The door was opened to a continual expansion of the institution in canonical legislation, as and when circumstances permitted.

Synthesis of heterogeneous norms

Gallic bishops were not only concerned with upholding the imperial legal system, they positioned themselves as a bulwark against social decay more broadly. They re-stated and recycled all kinds of 'old rule' including norms found in the disciplinary manuals such as the *Didache* and canons of early fourth-century Greek councils. In the absence of an undisputed central authority, such as an ecumenical council or emperor capable of standardizing legal norms across the empire, local collections became relatively more influential in determining what 'law' looked like in the regions of Gaul.

Compilers made use of heterogeneous types of older ecclesiastical norm from the Greek East as the material for their new canonical rules. The *Statuta Ecclesiae Antiqua* were modelled upon the Apostolic Constitutions and used both the 85 Canons of the Apostles and five canons of Basil as material for his disciplinary canons.[558] The rules based upon the Canons of the Apostles dealt primarily with the clergy but contained some on heretics, penitents and various sub-categories of the faithful including the poor, catechumens, neophytes and widows.[559] Likewise, Epaon based several of its canons upon those of fourth-century Greek councils received via the *Dionysiana*. These canons largely addressed two subjects: metropolitan authority and penitence, including additional penitence required for imperial-law crimes discussed above.[560]

In one sense, therefore, the phenomenon of Gallic bishops using their canonical regulations as all-purpose legislation capable of protecting the entire

[558] Munier, *Statuta*, 125.
[559] Ibid., 127.
[560] A. Mardirossian, 'Canons d'Orient et royaume barbare. L'influence du droit canonique oriental sur la législation du concile d'Épaone', in *Revue historique de droit français et étranger* vol. 83, no. 3 (2005), pp. 355 - 384.

orthodox community and policing its morality was a 'return to form', a resumption of the style of rulemaking seen in the minority urban sects of the early fourth-century Greek East. Gallic bishops could see themselves merely as resurrecting long-neglected facets of their episcopal office. They took an eclectic approach, adopting relevant imperial legislation where expedient.

Incest

It was in this milieu, in which bishops cast around for 'traditional' normative sources in order to synthesise local canonical norms and thereby secure what they perceived to be fundamental organisational and cultural norms, that new legislation on 'incestuous marriages' was formulated, i.e. marriages between distant relatives or siblings in-law.[561] As we saw in Chapter One, between c. 325 and 511 there were effectively two centuries of near silence on the issue of incestuous unions and lay marriage more broadly.[562]

By contrast, in the post-imperial era, church councils started once again to issue prohibitions on incestuous unions, and then to extend the prohibition to include new types of relationship. The sixth century saw a conciliar 'obsession'

[561] Ubl, *Inzestverbot*; S. Corcoran, 'The Sins of the Fathers: A Neglected Constitution of Diocletian on Incest', *Legal History*, vol. 21 no. 2 (August 2000), 1 – 34; M. de Jong, 'An unsolved riddle: early medieval incest legislation', in I. Wood (ed.), *Franks and Alamanni in the Merovingian period: an ethnographic perspective* (Woodbridge, 1998), 107-140; I. Wood, 'Incest, Law and the Bible in sixth-century Gaul', *Early Medieval Europe* 7, 3 (1998), 291 – 303.

[562] The relative silence of fourth- and fifth-century councils on incest is observed by Ubl, *Inzestverbot*, 138. The exception to this was the decretal, *canones synodi Romanorum ad Gallos episcopos*, variously attributed to Damasus, (366 – 384), Siricius (384 – 389) or Innocent (401 – 417). In this, the bishop of Rome advised unknown bishops of Gaul on a range of disciplinary matters, two of which concerned incestuous unions: c. 9 on those who married the sister of their wife, and c. 11 on those who married the wife of their uncle, or married his cousin. C. 9 was justified with exegesis, whilst c.9 referred to the *canones Apostolicos* for its sentence: that those who persisted in such unions were to be removed from the priesthood. Maaßen, *Geschichte*, I.242 (following Coustant, *Epistolae Rom. Pont.*, 685ff.) attributes it to Siricius; Sirmond, *Concilia Galliae Antiqua* I., 585, to Innocentius; Y. Duval, *La décrétale Ad Gallos episcopos: son texte et son auteur, texte critique, traduction française et commentaire* (Leiden, 2005) to Damasus. N.B. *Canones Apostolicos*, c. 19 prohibited those who had married two sisters or his brother's or sister's daughter from joining the priesthood.

with incest in Gaul. No other subject was legislated for so heavily.[563] This revival of episcopal legislation on incest was to usher in an unprecedented level of influence for bishops and their *canones* over the lives of their lay congregants.

At Orleans 511, the bishops restated the prohibition on levirate marriages last defined by an imperial law in 355. Whereas the edict of Constantius and Constans had removed the ability of subsequent offspring to inherit, the canon of Orleans prescribed 'ecclesiastical penalties'.[564] In Epaon 517, Avitus extended the incest taboo (from 'those crimes which one does not dare to mention', i.e. presumably incest in the first degree of kinship; relationships between brothers and sisters in law, i.e. the widow of a brother and dead wife's sister; with stepmothers, great nephews and nieces) to include marriages involving the widow of an uncle or stepdaughters. No penalty was imposed, but these marriages were to be dissolved and their participants free to enter into new unions.[565]

Subsequent Gallic councils cited Epaon's new extended incest prohibition. Orleans 533, c. 10 reiterated the prohibition on marriages to stepmothers, and reinforced it with a sentence of anathema; no reconciliation was apparently envisioned.[566] Clermont 535, c. 12 repeated the prohibition from Orleans 511 but imposed a harsher sentence, exclusion from all society and communion.[567] Orleans 538 c. 11(10) forbad incestuous unions but ruled that in cases where new converts who were ignorant of this prohibition and had already contracted such a marriage, it should be allowed to stand.[568]

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[563] Ubl, *Inzestverbot*, 137.

[564] Orleans 511, c. 18 '*...ecclesiastica districtione feriantur.*' (MGH, concil. I, 7); cf. CTh 3.12.2 (355).

[565] Epaon 517, c. 30 (ibid., 26).

[566] Orleans 533, c. 10, (MGH, concil. I, 63).

[567] '*Si quis relictam fratres , sororem uxoris, privignam, consubrinam sobrinamvae, relictam idem patrui adque abonculi carnalis contagii credederit consortio violandam et ausu sacrilego auctoritatem divinae legis ac iura naturae perruperet et, cui caritatis ac pii affectus solacia exibere debuerat, suorum hostis ac pudicitiae expugnatur vim inferre timptaverit, apostolicae constitutionis* [n.2: cf. synod. Rom. Sub Siricio vel Innocenti I. hab. C. 9. 11 Maaßen, Quellen I, 242] *sententia feriatur et, quamdiu in tanto versator scelere, a Cristeano coetu adque convivio vel aeclesiae matris communione privabitur* [n.3: Epaon c. 30; Hinschius IV, 798].' (MGH, concil. I, 68).

[568]MGH, concil. I, 76.

Regulation of lay marriage pushed bishops to envision their canons as practical rules for the laity. In order for these proscriptions to have any effect on marriage practices, they needed to be known beyond the *basilicae* in which they were agreed and recorded. Hence Orleans 538 also articulated the expectation that the laity would and should be aware of these '*patrum statuta sacerdotali*'.[569]

There was also a steady creep in terms of the enforcement mechanisms envisioned. What had started as proscriptions backed by loss of testamentary rights (CTh 3.12.3) or exclusion from communion which could be negated with penance (Neocaesaria pre-325, c. 7), and later was repeated as an ordinance primarily aimed at the clergy (*Canones Apostolicos*; *Ad Gallicos Episcopos*, both late fourth century restatements), gradually became a compulsory rule, the transgression of which would result in total exclusion from society (Clermont 535, c. 12; Paris 614, c. 16(14)),[570] and later, in the royal legislation, execution or exclusion from the royal palace (*Decretio Childeberti*, Andernach, c. 2).[571]

The heightened concern with controlling lay marriage in the sixth century has been attributed to a conflict between Roman and 'Germanic' marriage customs. However, Ubl argued convincingly that this cannot form the primary explanation. Not only did disputes arise over marriages between apparently Roman individuals, but the majority of subscribing bishops came from the south of Gaul, rather than the north-eastern regions which saw the highest levels of migration.[572] Ubl, focussing upon Avitus' milieu and ecclesiastical agenda, suggested the Bishop's desire to 'return' to either Roman or Christian tradition was key in explaining the preoccupation, but ultimately decided it could not satisfy entirely as an explanation for the legislative development which exceeded Roman law and Biblical precedents.[573]

Placing Avitus' extension of the prohibition into context with the wider changes occurring in other areas of canonical legislation helps to explain why

[569] Ibid.
[570] *Chlotharii II Edictum*, MGH LL 2.1 ed. Boretius (Hannover, 1883), 20-24; Below.
[571] *Childeberti II Decretio*, (ibid.), 15-18.
[572] Ubl, *Inzestverbot*, 139 with literature.
[573] Ibid.

the innovation on incest occurred when it did. Orleans 511's reaffirmation of the imperial-law prohibition mirrored its canon on asylum. Both were perhaps indicative of a concern amongst Gallo-Romans that Alaric's re-affirmation of Roman law would no longer be enforced under the Franks or would carry less weight north of the Loire.

Similar concerns were held by the episcopate in Burgundy. Bishops solicited royal Burgundian laws on social issues. The *Liber Constitutionum* contained an undated law prescribing the *wergeld* that was due in cases where a man had committed adultery with 'a relative or his wife's sister', which indicates the Burgundians already viewing levirate marriages as in some way incestuous (in line with Roman and canonical law) by the start of the sixth century; perhaps, although not necessarily, as a result of pressure from the Gallo-Roman episcopate.[574] Furthermore, the *Lex Romana Burgundionum* contained edicts from the Theodosian Codes regulating second marriages. (One imposed a time restraint on women who wished to remarry and the second secured the usufruct of the wife's dowry to her should she remarry).[575]

The promulgation of these laws on incest and marriage, at least one of which was solicited by a bishop, may well indicate that there was an appetite to uphold Roman marriage practices as defined by imperial law in the Burgundian kingdom. As soon as the Burgundian episcopate had an opportunity to convene a kingdom-wide council after the conversion of Sigismund in 516, the bishops followed in the footsteps of their colleagues to the west. Hence Epaon too reaffirmed the canonical prohibition against levirate marriages. The concern with incestuous unions was part of a wider effort, driven in large part by the episcopate, to reaffirm Roman laws on marriage and society. It was this impetus which pushed church councils to make their *canones* more authoritative on the subject.

[574] LC 36 '*De incesti adulterio*', (MGH LL nat. Germ. II 1, 69).
[575] LRB, 16.1-2 (= CTh 3.8.1 (381) & 3 (412) respectively) (= Brev. 3.8.1 and 3 respectively).

3.C The application of canons

In the previous sections we saw how between c.405/6 and c.536 Gallic bishops generated larger quantities of legislation, addressed a wider range of issues with their rules and started to design rules with more elaborate penalty clauses. This final section will argue that there was a commensurate shift in the way in which Gallic bishops 'used' their rules. Canons were 'applied' or 'enforced' against the laity, a phenomenon largely absent in the fourth century. Furthermore, Gallic bishops cited canons routinely and accurately, suggesting the proliferation of compilations in the second half of the fifth century accompanied a shift in praxis.[576] Finally, Gallic bishops started to articulate and deploy new ideas and terminology, suggesting regular use of canonical regulations in councils helped to shift perceptions of them as rules. These phenomena mirrored similar developments occurring elsewhere across the post-imperial West, but the conditions of a fragmented Gaul proved uniquely conducive to the emergence of a new ecclesiastical legal culture.

In fifth- and sixth-century Gaul, we start to see the first real evidence of bishops making efforts to 'enforce' their canonical norms against the laity. This was clearest in relation to 'incestuous' marriages. A striking example comes from the council of Lyon (held at some point between Avitus' death in 518 and the end of Sigismund's reign in 523), which met to discuss the case of Stephanus, Sigismund's treasurer, who had married, Palladia, his deceased wife's sister.[577] King Sigismund had sided with Stephanus against the bishops.[578] The crime had occurred after both the council of Epaon's extension of prohibited marriages and King Sigismund's own law condemning unions between a man and his wife's sister.[579] The bishops held to their recent

[576] Barion, *Synodalrecht*, 93; Mordek, *Kirchenrecht*, 66-70.
[577] The case is attested in the *acta* of the council of Lyon and the *vitae* of Apollinaris of Valence and Avitus of Vienne.; *Vita Apollinaris*, 2 – 3, ed. B. Krusch, MGH, SRM III (Hanover, 1896); MGH, concil. I, 31 – 35: *'...causa Stephani incesti crimine polluti...'*.
[578] Lyon 517/23, c.3 (ibid., 33)
[579] Epaon 517, c.30; *Liber Constitutionum*, 36 (issued Easter 517).

legislation against incestuous relationships, whilst Sigismund disregarded his own.

At Lyon, the bishops set the parameters for collective 'strike action' against the King, i.e. to withhold their ministry from his realm (and thereby undermine a central plank of his legitimation strategy), until the marriage was dissolved. They agreed that their original sentence of condemnation was to stand; that anyone else who committed such an act would also be punished. If any of them suffered any affliction from a 'secular power' as a result of this matter, they would all 'suffer in common'.[580] They noted that if the King separated himself from communion, he should have the opportunity to return. They all agreed to withdraw to monasteries until the King restored peace again.[581] They agreed not to intrude upon one another's dioceses by giving service, ordaining successors or misappropriating individual churches.[582] Any bishops who transgressed this agreement were to suffer perpetual excommunication.[583]

The episcopate thereby acted to enforce discipline against an unwilling member of the laity and, possibly, to uphold a prohibition they had recently defined in their own conciliar legislation. The *acta* of Lyon do not specify the basis upon which Stephanus was originally condemned. However, it seems likely they were making a stand in favour of the legislation from the council of Epaon. In addition to the chronological proximity to the Epaon with its innovations on incest, there is also the fact that in c. 2 (4) they made reference to, '*statuta antiquorum canonum'*, in order to justify the provision against bishops intruding upon the dioceses of one another, implying they conducted their action with reference to existing canons.[584]

Whether or not the action was successful, the fact that such a concerted effort was made by the bishops to enforce their norm upon an unwilling

[580] c.2 (ibid.).
[581] c.3 (ibid.).
[582] c.4 (ibid.).
[583] c.5 (ibid.).
[584] Maaßen identifies Arles 314, c.17; Antioch, c.13 and c. 22 as the relevant canons here.

member of the ruling regime is in itself new and significant.[585] It is possible the strike was sustained by an implicit understanding the Catholic Franks might intervene if the episcopate were ignored or abused too badly.[586] Later, in the Merovingian kingdoms, this pattern of episcopal enforcement would be repeated. King Charibert was excommunicated by Bishop Germanus of Paris for marrying the sister, Marcovefa, of his wife, Marofled.[587] Ian Wood has also raised the plausible possibility that the repetition of the incest prohibitions at the councils of Tours 567 and Paris 556/73 were inspired, in part, by a desire to criticise Charibert.[588]

A second example of incest regulations being enforced in the Burgundian kingdom suggests that the laity too were aware of the recent proscriptions on incestuous relationships. The Vincomalus affair, documented in three letters between Avitus of Vienne and his suffragan Victorius of Grenoble, provides an example of canonical regulations being discussed and applied.[589] It runs as follows: Victorius, Bishop of Grenoble, wrote to Avitus of Vienne asking for advice about Vincomalus, an elderly parishioner, whose long-standing marriage had been exposed as incestuous. Vincomalus had been accused publicly of having married the sister of his deceased wife. Avitus replied to Victorius, confirming he was right to be worried about the matter and recommending the dissolution of the marriage, a period of excommunication and public penance before either party could be readmitted to communion. The idea of separation was in accordance with the prescriptions of Epaon 517.[590] However, there is no way of dating the exchange precisely, so it is not clear whether it post- or antedates the Council of Epaon.[591]

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[585] Ubl, *Inzestverbot*, 136, supposes it was not.
[586] Wood, 'Gibichung', 14 suggests the strike might have been used as a pretext for Frankish intervention.
[587] LH 4.26.
[588] Wood, 'Incest, Law and the Bible', 302.
[589] *Avitus of Vienne, Letters and Selected Prose,* translated with an introduction by D. Shanzer and I. Wood (Liverpool, 2002), *Epistulae* 16, 17 and 18, pp. 285 – 290.
[590] Ep. 17 Avitus to Victorius. Cf. Epaon 517, c. 30. Incestuous unions are not to be pardoned until they have been dissolved etc. N.B. Epaon does not explicitly prescribe penance and excommunication (MGH, concil. I, 26).
[591] Shanzer and Wood, *Avitus*, 285.

In the final letter, Avitus wrote to Victorius amending his original decision. He suggested Victorius should only dissolve the Vincomalus' marriage without enforcing excommunication or public penance. He should merely *advise* Vincomalus that penance would be a good idea. The reason for this revision was that Vincomalus had subsequently remonstrated with Avitus, arguing in defence that his marriage was 30 years old.[592]

Whether or not the episode pre-dates the Council of Epaon, it provides an example of bishops discussing the practicalities of enforcing established church discipline against a layman.[593] Neither Avitus nor Victorius discussed the basis upon which Vincomalus' marriage was condemned. Victorius might have had in mind the council of Orleans 511, the Theodosian Code (or a variant thereof), Scripture, or no textual authority whatsoever.[594] However, the lack of citation of a canonical authority is of limited significance. Victorius did not ask Avitus *whether* the marriage was sinful. He had already concluded the union was unlawful.[595] Rather, he sought an appropriate response.[596] There are no grounds to conclude that Victorius was unsure whether the marriage was a sin.[597] Given that Avitus' other letter to Victorius made reference to people citing canons from Orleans (see below, Avitus Ep. 7 on heretical churches) and that Orleans 511, c. 18 was vague on the response to incestuous unions ('*Quod si fecerint, ecclesiastica districtione feriantur*.')[598] it is entirely possible that Victorius had this canon to hand when formulating his decision and that he turned to his metropolitan for guidance where the canonical prescriptions fell silent. It should also be noted that the council of Epaon's proscription against incestuous unions stated only that they were to be dissolved; it offered no guidance on penance or reconciliation with the church community. It therefore

[592] Ep. 18 Avitus to Victorius.
[593] Shanzer and Wood, *Avitus*, 285 remain open on this dating.
[594] The potential authorities would have been Orleans 511, c. 18; CTh 3.12.2; 1 Cor. 16.
[595] He referred to it variously as 'a heinous crime', 'the atrocious deed' and 'unlawful'.
[596] 'I can barely decide what the sentence should be. In my hesitation, I will neither bar him from communion nor allow it to him, unless I am backed up by your authority.' (Shanzer & Wood trans., 287).
[597] As did Shanzer and Wood, *Avitus*, 286.
[598] MGH, concil. I, 6.

also seems possible that the correspondence post-dates Epaon 517; that there was no confusion over whether a crime had been committed; and that the only question was on how strictly the rules should be enforced and what additional measures were required to resolve the situation adequately. On this point, it is noteworthy that Avitus said his judgment should represent an upper limit for Vincomalus' punishment and Victorius could mitigate the ordained severity of the punishment, if he saw compunction on the part of the sinners.[599] Indeed, Avitus ultimately mitigated the sentence himself.

Secondly, contra Ian Wood's conclusion, the episode arguably indicates a reasonably wide-spread awareness of the prohibition of levirate marriages. Not only were Victorius and Avitus already in agreement on the 'unlawful' nature of the marriage, but also the matter had been brought to Victorius' attention by a rumour about the turpitude of Vincomalus' marriage in the first instance and secondly by a specific accusation levelled in public. Whoever had accused Vincomalus appears to have used the disapprobation of the *populus* as leverage; to have exposed an apparently obvious sin and demanded restorative action.[600]

While the 'strike action' at Lyon 518/23 suggests bishops in the post-imperial regions of Gaul were increasingly prepared to act as if their canonical norms were binding rules, this 'insistence' was not automatic or even universal. That canons were not necessarily seen as an authoritative and binding form of legislation is suggested by the letter from Bishop Avitus of Vienne addressing the problematic distinction between different types of church, mentioned above.[601] Avitus responded to a query from Victorius, bishop of Grenoble, who had asked for guidance on the fraught issue of returning churches that had belonged to the Arians. Avitus' reply dealt with the distinction between 'private oratories' and 'churches'. Avitus justified his reply, that it was better to shun the old heretical churches than to permit their return, on scripture. He did so explicitly in order to shut down any objections made according 'self-evident

[599] Trans. Shanzer & Wood, *Avitus*, 289.
[600] N.B. Gregory described Merovech's incestuous marriage to Brunhild (cf.Ch.5) '...*contra fas legemque canonicam*...', (LH 5.2).
[601] Shanzer and Wood, *Avitus Ep*. 7, pp. 295 – 305

reason' or from 'canonical books'.[602] Wood interprets this as a potential refutation of Orleans 511, c. 10 (which permitted the return of Arian priests and churches to the Catholic faith).[603] It was possible, therefore, for Avitus to disregard canonical regulations in favour of his own interpretation of Scripture shaped in response to the practical necessities of the Burgundian kingdom. However, on the whole, the first quarter of the sixth century in Gaul saw new arguments in favour of the integrity of canons as binding norms. It also saw canons cited with a new level of sophistication, intensity and accuracy, which far surpassed the types of citation carried out by Augustine or in the *causa Apiarii* a century earlier, and which were sustained by the intervening development of prolific compilation activity.

One of the best documented examples of bishops citing canons as authoritative normative texts is the trial of bishop Contumeliosus of Riez. The use of canonical texts in this dispute contrasts strongly with that of Augustine in his episcopal career, or even the disciplinary disputes of fifth-century Gaul. The essentials of the dispute are as follows. Contumeliosus was a suffragan bishop tried by a small council of his colleagues, convened by Caesarius of Arles at the Ostrogothic-controlled city of Marseilles in May 533.[604] Contumeliosus was alleged to have committed '...*multa turpia*...', including sins of the flesh and despoilment of church property.[605] At the council, Contumeliosus confessed to his crimes and was sentenced to be confined in a monastery, to undergo penance and to pay the church back for the property he had sold. However, a disagreement arose as to whether he could subsequently resume his episcopal office at Riez. Several of Contumeliosus' colleagues supported his eventual reinstatement. However, Caesarius and a second faction held that he must remain deposed permanently. The council at Marseilles in 533 was eventually

[602] ibid.
[603] ibid., 296, n.5.
[604] Klingshirn, *Caesarius*, 102; See also Loening, I, 545 – 8.
[605] Preface. (MGH, concil. I, 60); N.B. Hannig, *Consensus*, 74 argues the preface sounds similar to the *cognitio* process; cf. procedure followed in resolution to the nuns' revolt at Poitiers (below).

dissolved without establishing the length of penance required of Contumeliosus or whether he could retake office subsequently.

In order to resolve the disagreement (in his favour), Caesarius wrote to Pope John II requesting a decision or advice. Three letters constituting Pope John's reply are extant. The first addressed the clergy of the church of Riez. It endorsed Caesarius as the executor to appoint Contumeliosus' replacement.[606] A second letter, addressed the bishops of Gaul, ruled that Contumeliosus could not regain his episcopal office. Pope John stated that a visitor was to be appointed to the church in Riez to pursue the activities pertaining to the holy mysteries only and was not to make changes to the ranks of clergy or the property of the church there.[607] The third letter was addressed to Caesarius himself. It detailed his responsibility to depose Contumeliosus permanently and appoint an administrator, and then, crucially, appended relevant canonical citations validating the Pope's proposed course of action to the clergy of Riez and bishops of Gaul. Pope John lamented the loss of a bishop, but declared that Contumeliosus' deposition was necessary to preserve the strength of the canons.[608] He advised that episcopal crimes in general should be exposed, so that Caesarius' colleagues would thereafter be on their guard against wrongdoing in the knowledge that crimes on their part would not be hidden from the people.

John's letter then gave the relevant excerpts detailing 'what the canons required', so that Caesarius could learn what had to be done.[609] These included the following excerpts drawn from the *Dionysiana*:[610]

[606] Ep. 13 (Klingshirn, *Caesarius*, 103).
[607] Ep. 12, (ibid., 103).
[608] Ep. 14 (ibid., 104); '*Dolemus de admissione pontefices, vigorem tamen canonum servare necesse est.*' (MGH Ep. *Arel.* 34, ed. Grundlach, 47).
[609] '*Quae vero de his canones praecipiunt, subter adicimus, ut, quae facienda sunt, positis agnuscere*.' (Ibid., 48).
[610] Maaßen, *Geschichte*, 437 on citation of *Dionysius Exiguus*; references to canons cited cam be found in the apparatus of MGH *Ep. Arel*. 34, ed. Grundlach 48.

- Siricius' decretal to Himerius of Tarragona, ch. 7: those in holy offices who return to their wives are to retain their office but are not permitted to perform the venerable mysteries.
- Canons of the Apostles, c.25: bishops, priests or deacons caught in fornication are to be deposed but not deprived of communion.
- Canons of the Apostles, c. 29: those condemned of crimes should not regain their former office.
- Neocaesaria 314/9, c.95: a priest who commits adultery should be deposed and do penance.
- Antioch 341, c.4: clerics cannot perform offices after being convicted by a council of superiors.
- Antioch 341, c.6: a bishop unanimously deposed by colleagues from his province cannot be judged again and his sentence should remain firm.

Caesarius forwarded Pope John's letter to the bishops of Gaul with his own addendum.[611] This consisted of his own selection of additional canons and a lengthy argument in favour of enforcing canons generally. Caesarius cited:

- Nicaea 325, c.2 (paraphrased): If anyone has been promoted to the episcopate after they have confessed a sin or been convicted, let them be removed.

Then a series of Gallic conciliar *acta*:

- Valence 374, c.4: deacons, priests or bishops who confess to pollution be mortal sin after ordination are to be removed from office whether he confesses or not.
- Orleans 511, c.9: a deacon or priest who committed a mortal sin should be deprived of office and communion at the same time.

[611] MGH *Epist. Arel*. 35, ed. Grundlach 49 – 54.

- Orange 441, c.22: a deacon or priest discovered to be having relations with his wife after ordination was to be expelled from office.
- Epaon 517, c.22: a deacon or priest who committed a mortal sin, should be deposed from his office and exiled to a monastery and only to communion only.

The exposition summarised the cited authorities and presented an argument against leniency for bishop Contumeliosus and in favour of the legalistic application of the canonical strictures. Caesarius highlighted that the three categories of canonical authority (the canons of the ancient fathers as transmitted by Pope John, the opinion of the 318 bishops [at the council of Nicaea] and the Gallic canons) were ad idem.[612]

He acknowledged that some people out of 'misguided piety' might be displeased by the severity of the Holy Fathers written above,[613] but countered by asking whether these objectors considered themselves more pious than the bishops of Nicaea, more merciful than the pope and more charitable than the rest of the bishops '*...qui hoc pro exemplum vel remedio eclesiarum suis definitionibus deliberaverunt.'*[614] He queried whether it would really be a kindness to leave the wrongdoers uncured until Judgment Day,[615] arguing instead that that even if the transgressor performed rigorous penance for many years, the bishops would still have a duty to preserve the canons.[616]

[612] Klingshirn, *Caesarius*, 107-113 translates. According to all three categories it was clearly established that clerics who had been caught in adultery and have either been confessed or convicted by others cannot return to their office.
[613] '*..., quibus pro nimia pietate suprascripta sanctorum patrum severitas menime placeat*,...' (MGH, *Ep. Arel*. 35, 50).
[614] Ibid.
[615] *Quae est ista iusticia inimica benignitas, palpare criminosus et vulnera eorum usque ad diem iudicii incurata servare*?' (ibid.).
[616] '*Quodsi etiam durissima eos paenitenciam per pluris annus agere videremus, sic ipsius et saluti eorum consolere et canonum deberemus statuta servare*.' (ibid.).

He argued that those they pardoned with 'dangerous and false mercy' would eventually testify against them at Christ's tribunal.[617] He also added that to allow Contumeliosus to remain in office would be to despise the canons of these great bishops of Nicaea, from Africa and elsewhere ''...*qui, ipsis ordinantibus, per totum mundum pro eclisiastica disciplina aliquid statuerunt, cum peccato animae nostre contemnemus*.'[618] His argument continued with two contrasting examples from the Old Testament of priests correcting and failing to correct their people's sins and thereby suffering or avoiding God's punishment accordingly .[619]

Several points emerge from the episode. Firstly, in contrast to Augustine who rarely cited canonical authorities in internal disciplinary affairs, canons were used in this context as the foundational authority for ecclesiastical discipline. Pope John II issue a selection of relevant authorities apparently in response to a specific query arising from Caesarius' council at Marseilles. Pope John II's reply did not cite the second canon of Nicaea 325, which is curious because he drew his other citations from Dionysius Exiguus' collection and must therefore have had access to Nicene canon. Nicaea 325, c. 2 would have been the most obvious, relevant and authoritative canon to cite. To my mind, the simplest explanation for the omission would be that Caesarius had already identified the Nicene canon as a relevant authority when he wrote to Pope John for a decision. Pope John's reply simply affirmed Caesarius' conclusion and provided additional relevant authorities. An alternative explanation might be that whoever researched Pope John's reply made a slapdash attempt at consulting the *Dionysiana* and Caesarius supplemented it accordingly. Either way, the Contumeliosus affair indicates that a much stronger awareness existed, both in Provence and Italy, of the canons relevant to ecclesiastical

[617] '*Vere dico, quia illi ipsi, quibus cum pericolosa et falsa misericordia indulgere videmur, cum ante tribunal Christi pro tantis peccatis damnandi advenerint, contra nos ipsus causas dicturi sunt:...*' (ibid., 51f.).
[618] ibid.
[619] Israelites punished Eli failed to rebuke their ill-behaved sons (1 Samuel 3:13; 4.10-18) and the second in which the high priest, Phinehas saved Israel by killing two adulterers (Numbers 25:6-11).

discipline. The utter confusion over the contents of the Council of Nicaea that reigned in the Council of Carthage in Augustine's day seems quite far removed.

Furthermore, the canonical citations were specific and the whole affair was remarkably well-documented. Pope John provided verbatim quotations with the title and relevant chapter or numbered act. Caesarius' addendum listed the number of bishops who had attended each Gallic council he cited. Both Caesarius and Pope John II in Rome cited from contemporaneous canon-law compilations. John's numbering of his citations matches that of Dionysius' second recension. Caesarius, meanwhile, cited canons contained in the *Statuta Ecclesiae Antiqua* (compiled in Gaul in the second half of the fifth century). In his exposition on canon law, Caesarius had referred to the need to uphold the canons of both the Ancient Fathers (i.e. those cited by Pope John) and those of the bishops of Africa. (The *Statuta* were mislabelled as African in sixth-century Gallic collections). The Contumeliosus episode therefore strongly suggests that the signs of increased canonical legislation and compilation in Italy and Southern Gaul towards the end of the fifth century were matched by a qualitative shift in the use and status of canonical regulations, i.e. an increasingly legalistic and authoritative application of the canons themselves.

The Contumeliosus trial also illustrates how the process of using and applying canonical norms led to new arguments about their inherent authority. Caesarius articulated new arguments in favour of viewing canons as binding 'legal' norms, which ought not to be discarded through 'false mercy' or 'misguided piety'. He did so in response to arguments from Contumeliosus' faction, that bishops should intercede and mitigate formal judgement with *caritas*. Caesarius' argument in favour of enforcing strict canonical discipline was preserved in numerous sixth- and seventh-century Gallic compilations, and was eventually appended to a late recension of the *Vetus Gallica* (see below), mislabelled as a decretal of Hormisdas.[620]

The fifth and sixth centuries were a period in which bishops shifted from imagining themselves primarily as intercessors, who interposed Christian values

[620] M. Elliot, 'New Evidence for the Influence of Gallic Canon Law in Anglo-Saxon England', *The Journal of Ecclesiastical History*, vol. 64 (4), (2013), pp. 700 – 730 at 700ff.

into the normal flow of secular justice, and towards a dual role in which they also bore responsibility for 'enforcing' discipline amongst the population as a whole, by legislating and upholding 'legal' norms rather than simply disrupting them. [621] The tension between discipline and *caritas*/*clementia* was longstanding, yet in sixth-century Gaul there was a strong tendency to emphasise the former.[622] Bishops in post-imperial contexts could not escape their dual identity as both intercessor and enforcer.[623]

There was thus a twofold change underway. One the one hand, the contents of canonical regulations were changing. They were being written for new fields of human activity (lay sexuality, church property, ecclesiastical legal privilege), demanding new standards of behaviour from laity and clergy and imagining stricter modes of punishment. On the other hand, the bishops who authored these changes were also articulating new arguments in favour of strict enforcement of canons and making concerted efforts to uphold their rules bureaucratically and with the help of existing episcopal hierarchies. It took clerics confronted with the practicalities of enforcing discipline according to their own canonical legislation to distil these ideas into a 'judicial theology' in which the threat of God's judgment was a close presence.[624]

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[621] cf. Wormald, *Making,* 1999, 162 Who counted bishops amongst those with a specialism in law along with royal officials.

[622] For earlier formulations of the debate see **Theophilus of Alexandria's** letter to Jerome Ep. 96. 20, J. Migne (ed.), *Patrologia* Latina, xii. 789, which 'opposes law and charity, and truth and mercy,…'; **Ambrose**, *De Officiis: Edited with an Introduction, Translation, and Commentary* 2 vols. I. Davidson (Oxford, 2001), 2.24.125 – 126 (at 336f.), emphasized clerics' obligations to exercise impartiality, charity and compassion in the fulfillment of judicial responsibilities; **Serdica 343**, c. 8, the earliest canon on this function imagined it as bishops interceding into imperial justice; also, ironically, the ***Statuta Ecclesiae Antiqua***, c.54 bishops have a duty to 'exhort disputing brothers, whether clerics or lay people, to peace rather than judgment.' See also, E. James, '*Beati Pacifici*', 26.

[623] Rapp, *Bishops*, 246 – 52, esp. 249 emphasized that the 'episcopal court' was rather a forum for extraordinary arbitration to which disputes headed for the magistrate could be diverted. Bishops were also one of many religious and local leaders who could potentially exercise this power. It was only with Justinian that the *episcopalis audientia* became more like a formal court of first instance according to imperial law; see, *Nov. Just*. 86, (a. 539).

[624] Angenendt, 'Kirche als Träger', 110 onwards, observes *Iudicium Dei* as an immediate temporal possibility was notably absent in imperial law, but came to define Merovingian legal culture.

Conclusions

The process of imperial fragmentation and the balkanization of Gaul into successor kingdoms had a profound impact upon the production, content and application of canon law in Gaul. As Gallic bishops were gradually removed from 'senior' legislative and appellate mechanisms of the Empire, they gained greater agency in the production and application of canon law. This process resulted in canons acquiring legislative functions, which previously had been held by imperial law. Canons defined clerical legal privileges (*privilegium fori*, church asylum) and took a greater role in defining and regulating ecclesiastical property. The boundaries between imperial law and canons became porous, and Gallic bishops became more self-confident in their ability to synthesize a range of different norms in order (as they saw it) to preserve the existing legal order. Asylum was adapted to fit new Frankish modes of justice, and the prohibition on 'incestuous' marriages was extended.

Changing material and social circumstances forced local bishops to adapt their *canones* to new questions, most notably on the subjects of church property and incest. By responding to these new complex subjects, bishops implicitly advanced a claim that their conciliar canons were the appropriate (or legitimate) medium through which the emergent mass religion ought to be defined. Furthermore, In the course of using their canons to settle disputes, Gallic bishops like Caesarius articulated new arguments about the need for discipline (in addition to *misericordia*) and the strict enforcement and authority of canons. These claims were by no means universally held. Bishops like Avitus were still quite comfortable explicitly eschewing canonical regulations in favour of their own exegesis.

Bishops consistently sought new law from their local successor kings, but the responses they received varied in quality and tone. Alaric II appears to have 'dis-established' Catholic churches and clerics, while preserving their fiscal immunities and limited versions of their legal privileges. Bishops started to

legislate extensively on lay piety and to refine their ‘canon-law’ control mechanisms, such as excommunication and penance. This might have been a response to the gradually receding 'establishment status’, which under the functioning empire had provided them with tools for maintaining a monopoly on determining ‘orthodox’ religion by suppressing ‘external' religious groups. Bishops developed new strategies for upholding their values (and possibly also their canonical legislation) in the successor kingdoms. By withdrawing their ministry they could undermine their successor king and potentially open an opportunity for a regional rival to intervene. The proliferation of canonical compilations coincided with conciliar proceedings which stressed the need for the rigorous enforcement of canons.

Chapter Four: Gallic Canon Law c.537 - 614

In 537, the Frankish king of Austrasia, Theudebert, annexed the eastern half of *Gallia Narbonensis*.[625] The East-Roman historian, Procopius, described the Franks moving to occupy Marseilles and its neighbouring ports. He imagined the northern invaders acting as gentlemen of leisure, attending the races at Arles.[626] Provence was the final region of Gaul to fall to the Merovingian Franks. The Burgundian Kingdom had been annexed a couple of years earlier, the Visigothic Kingdom of Toulouse subjugated by Theudebert's grandfather, Clovis, after the battle of Vouillé in 507.[627] For Procopius, this latest annexation marked the point at which the barbarians had truly conquered the West. His narrative of western decline was timely since it validated Justinian's increasingly brutal subjugation of the Ostrogothic Kingdom, underway since 535.[628] Procopius was certainly right in one sense. The unchallenged Frankish annexation of Provence closed a period of Gallic history, just over 130 years in length, which had been marked by continual political disintegration. From the 530s onwards Gaul was unquestionably a Merovingian sphere.

This chapter will examine how canons continued to develop in sixth-century Gaul under Merovingian hegemony. It will argue that canon law emerged as a flexible source of authority and power in the Merovingian sphere c.530s – 614, as they were integrated with monarchical power and the latent authority of imperial law. Over the course of the sixth century, canonical regulations became more relevant to diverse areas of social, economic and political activity in Gaul. The overarching argument of this penultimate chapter

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[625] Scholz, *Merowinger*, 88; for the geopolitical situation, Heather, *Restoration*, 212f.
[626] Procopius, *Wars*, ed. and trans. H. Dewing, vols. 1–5 (London, 1914–28), 7.33.5.
[627] Halsall, *Migrations*, 491, 502.
[628] P. Amory, *People and Identity in Ostrogothic Italy, 489 – 554* (Cambridge, 1997), 120-8 argues the idea of end of empire took hold in the 520s rather than 476. Also, Theudebert I projected 'imperial' authority, being the first Merovingian to issue gold *solidi*. Wood, 'Gibichung', 11 - 22. Note also Aurelian (probably bishop of Arles)'s 'letter of adulation' to Theudebert, Wallace-Hadrill, *Long Haired Kings*, 191-2 cites *Ep. Austrasicae* 10, ed. Grundlach 124 – 126.

is that, as this 'expansion' of canon law took place, perceptions of canonical legislation also changed. Lay and ecclesiastical elites started to 'use' canons *as if* they held similar properties to 'law'. This does not mean that canons were always 'enforced', but that clerics and lay people started to use canons with greater fluency as tools for achieving their own particular aims and objectives in a range of contexts. The following chapter (Five) will build upon this analysis of the legislation in order to identify the underlying transformative factors. Chapter Five will then identify 'causal' factors which help explain why these changes in canon law took place in late-sixth century Merovingian Gaul.

Chapter Four is divided in three sections. 4.A will focus upon the canonical legislation produced at the end of the sixth century in order to highlight its novel features. It will argue, that the content of canonical legislation became more invasive of lay life; that 'maximalist' versions of key 'imperial' ecclesiastical legal privileges were adopted; and that new types of canon were authored, which resembled judgments or transactional legal 'instruments'.

4.B will examine the late sixth-century legislation of Merovingian kings in order to argue that the Gallic conciliar legislative agenda appears broadly to have served as a conceptual 'rump' for the most 'Roman' edicts of the Merovingian kings, issued with greater frequency around the turn of the seventh century. Secondly, the legislation suggests that by the end of the sixth century Merovingian kings had embraced post-imperial canon law and the expanded legal role the episcopate, which had become fundamental components of their own post-imperial, 'public' monarchical authority.

Section 4.C will survey non-legislative sources in order to argue that a new 'legal culture' emerged in Merovingian Gaul. Canons were accorded greater status as a source of authority and justice by society as a whole, than had been the case under the Empire, and they were sometimes used 'legalistically' even by the laity. It will also highlight parallels between the rhetorical sparring matches in Gregory of Tours' History and the concepts found in conciliar and royal legislation.

4.A: Late-sixth century canonical legislation

As the sixth century progressed, canons became ever more invasive of lay life and defined additional Christian rituals as mandatory acts.[629] From the start of the century, councils had begun to prescribe *how* and also *where* the laity ought to participate in the Eucharist. By the end of the century, observance of the Lord's day and attendance at mass were defined as compulsory. At Macon 585, bishops from across Gaul surrounded by an unknown number of prestigious lay attendees pronounced serious temporal penalties for laymen who failed to observe the Lord's Day. Advocates were to lose their disputes (it is not clear whether this was a plea for divine intervention or a practical rule), peasants or slaves were to be flogged, whilst clergy were to be suspended from the fellowship of their peers for six months.[630] All men and women were obliged to offer bread and wine at the altar on Sundays.[631]

The sanctioning of these 'coercive' measures by an episcopal council was not entirely dependent upon royal support.[632] Smaller provincial councils with no recorded secular involvement also prescribed corporal punishment (although admittedly, not with regards to lay participation in fundamental ritual). For example, Eauze 551 ruled that '*humiliores*' who cast incantations were to be flogged, while '*superiores personae*', were to be excommunicated.[633] The acknowledgement of different grades of person subject to different disciplinary penalties marked canons becoming more like 'secular' criminal laws and foreshadowed the rhetoric in Guntram's edict (mentioned in the

[629] Ubl, *Inzestverbot*, 166 explains this as the '*Radikalisierung der bischöflichen Reformagenda*'; Scholz, *Merowinger*, 154 onwards.
[630] Macon 585, c. 1 (MGH, concil. I, 165); cf. CTh 2.7.1, 8.8.1, 3; 11.7.10, 13 (no cases, or tax collection on Sundays) – there was no imperial precedent for compulsory attendance at mass.
[631] Macon 585, c.4. (ibid., 166), attendance and making an offering at the altar were required every Sunday. '*Omnes autem, qui definitiones nostras per inoboedientiam evacuare contendit anathema percellatur*.'
[632] Ubl, ibid., suggests the 'radical' legislation at Macon resulted from Guntram's support for the episcopal agenda. (cf. below, Ch.5).
[633] Eauze 551, c. 3 death for those who practiced magic (ibid., 113); *Decretio Childeberti*, Andernach (a. 596), c. 2 for those who transgressed the incest prohibition. Attended by eight bishops and one presbyter (MGH LL Capit. I, 15-18); cf. Pontal, *Synoden*, 136f.; Halfond, *Archaeology*, 228.

introduction and below).[634] Likewise, the fact that coercive suppression of deviant religion was by that point considered a legitimate subject for 'canons' marked a continuation of the elision of imperial and canonical legislative function seen earlier in the legislation of Hilary of Arles.

In fact, while bishops were technically restricted from becoming directly involved in torture or execution of criminals,[635] Gregory of Tours records a handful of instances in which bishops exercised (or at the very least coordinated) extreme coercive force against heretics or proponents of 'unofficial' (i.e. popular) religion.[636] The bishop of Le Puy directed his '*viros strenuos*' to strip and execute a man claiming to be Jesus in front of his followers. The Bishops' men then compelled the man's recently bereaved associate, Mary, by '*suppliciis'* into confessing her '*fantasmata... ac praestigias*'.[637] Bishops often appear to have been followed by some kind of staff in this period, making such 'enforcement' a possibility, if not a regularity.[638] These instances of episcopal coercion usually arose in relation to non-ordained, vulgar 'holy' men and women, people against whom a bishop sought to defend his monopoly on determining 'correct' or 'orthodox' religion.[639] They do not equate to bishops taking over 'secular' law-

[634] Both Roman and Frankish laws observed the distinction, Jones, LRE, 518-20; Scholz, *Merowinger*, 76f. ; By contrast, it was absent from earlier canonical regulations. Although, cf. Lamoreaux, 'Episcopal Courts', 162f. who perceives episcopal use of violence in Augustine's Africa.

[635] Macon 585, c.19 (MGH concil. I, 171); and on Apostolic Canons forbidding corporal punishment, L. Dossey, 'Judicial Violence and Ecclesiastical Courts in Late Antique North Africa', in R, Mathisen (ed.) *Law, Society, and Authority in Late Antiquity* (Oxford, 2001), 98 — 114, at 100; Loening, *Geschichte* I, 193; Nissl, *Gerichtsstand*, 23.

[636] James, 'beati' does not address these instances.

[637] LH 10.25 (MGH, SS Merov. 1.1, 519).

[638] J. Kreiner, 'About the Bishop: The Episcopal Entourage and the Economy of Government in Post-Roman Gaul', *Speculum,* vol. 86 no. 2 (April 2011), pp. 321 – 360; cf. Diefenbach, 'Bischofsherrschaft', 93 n.14.

[639] E.g. the destruction of the stylite at Trier's column at LH 8.15 (Krusch/Levison, 381-83). A previously independent ascetic was forced to live in a monastery and his column destroyed by local bishops. Gregory describes in some detail going to interview the man years later, who told him that '*sacerdotes non obaudire adscribitur crimini*'. Therefore, despite weeping bitterly he obeyed. To do otherwise would have been '*contrarius iussionibus sacerdotum*'.

enforcement,[640] but they were enough to shift the perception of what role bishops and their canons might play in policing the *populus*, i.e. one in which they held a dual role as intercessors against- *and* enforcers of legal process. Bishops also continued to refine their 'enforcement mechanisms'. A council of unknown location dated to 614 required that clerics distribute among neighbouring '*civitatibus vel parrochiis*' the name and offensive act of any layman whom they excommunicated.[641]

The extension of the incest prohibition at Epaon 517, which had marked a significant expansion of function for western conciliar legislation, was continued throughout the sixth century (Ubl described it as a Merovingian 'obsession').[642] At Macon 585 attendees ruled that '*gravioribus penis*' should be inflicted on anyone who engaged in incest.[643] At Paris 614, perpetrators were to be excluded from communion until the marriage was dissolved.[644] (See also below: Childebert II's 596 edict, which banished those guilty of incest from the royal palace and decreed their possessions were to be confiscated).[645]

By the end of the sixth century, canonical legislation also imposed economic obligations on the laity. Tours 567, c. 5 exhorted each city to feed its poor and needy inhabitants according to its means. A letter from the council to 'the people' also encouraged them to pay the tithe.[646] Macon 585 was the first council to declare that payment of the tithe was a compulsory obligation. The canon presented tithes ('*decimas fructum*') as '*fidei sanctae catholicae causas',* which had fallen into desuetude over time but were now being reinstated by means of contemporary legislation. The final line threatened permanent excommunication for anyone who refused to pay in the face of '*nostris*

[640] Diefenbach, 'Bischofsherrschaft', 98 notes continuation of secular leadership and officials in the *civitates* in Gregory of Tours' works.
[641] Incerti Loci, 614, c.13 (MGH, concil. I, 195); see, Hartmann, 'Bischof als Richter nach den kirchenrechtlichen Quellen, 820.
[642] Ubl, *Inzestverbot,* 166; Legislation on incest: Lyon 583, c.4 (MGH Conc. 1, 154); Auxerre 582/92, c.31 (ibid., 182).
[643] Macon 585, c.18 (MGH, concil. I, 171).
[644] Paris 614, c.16(15) (MGH, concil. I, 190).
[645] See below; also Hinschius *Kirchenrecht*, IV, 846.
[646] MGH, concil. I, 136-38. It encouraged them to give one tenth of their property to their church as a special act of repentance.

statutis'.[647] By contrast, references to tithes in fourth century conciliar *acta* and papal letters described voluntary offerings from the faithful.[648] Macon 585 also demanded the laity show deference to ordained clerics they encountered in public. Laymen were obliged to dismount from their horses greet clerics and, if they encountered a 'distinguished cleric', to ensure they honoured him with reverence.[649]

Further examples of the 'expanding' function of canonical rules include the emergence of canons to regulate relations with Jewish populations of Gaul. Christian-Jewish relations had previously been governed by imperial law. Early fourth-century Greek church councils had sometimes attempted to stop congregants eating with Jews, but did not regulate non-orthodox groups themselves.[650] However, as Halfond noted, from Orleans 538 onwards Frankish councils started to limit or end Jewish ownership of Christian slaves.[651] As with the canons on lay attendance at Mass and the tithe, the most strident rules were articulated in the 580s. Macon 581/3 prohibited Christians from eating with Jews,[652] and prohibited Jews from owning Christians.[653]

The steady growth of these obligations and restrictions on the behaviour of the laity were facilitated by, and arguably symptomatic of, the continued

[647] Macon 585, c.5 (MGH, concil. I, 166f.) Tithes were required by '*legis ...divinae'* and '*legis Christianorum*', which the Christians now '*neglegunt'*. The bishops reinstituted them '*statuimus ac decernimus*...'. Anyone who refused '*nostris statutis*' was to be considered '*contumax*' and excluded.

[648] Jones, LRE, 894; G. Constable, *Monastic Tithes From Their Origins To The Twelfth Century*, (Cambridge, 1964), 20, saw tithing as a practice with its origins on the sixth century. R. Finn, *Almsgiving in the Later Roman Empire: Christian Promotion and Practice (313 – 450)*, (Oxford, 2006), 38, 49 – 56 reaffirms this conclusion convincingly contra Gaudemet et al. Pope Anastasius (399 – 401) had reiterated the norm first articulated at the Council of Gangra, 341, that forbad anyone from disposing of *oblationes ecclesiae vel decimas* without the knowledge of the bishop (Anastasius, JK†279, *Gratiani Decr*. C. XVI q. 1 c. 55. CVL '; Gangra, 341, c. 7. (EOMIA II 193).

[649] Macon 585, c. 15 (MGH, concil. I, 170f.).

[650] E.g. Elvira 306, c.50; Laodicea, c.38; Examples of anti-Semitic legislation CTh 16.8 laws against Jews and heresiological groups; CTh 3.1.5 and 16.9 no Jews to own Christian slaves; CTh 3.6.7 no Jew to marry a Christian.

[651] Halfond, *Archaeology*, 107f.

[652] Macon 585, c.15 (MGH, concil. I, 159).

[653] ibid. c.16 Any Christian slave could be compulsorily purchased for 12 solidi.

consolidation of the clergy's role as intercessors and defenders of the poor.[654] Bishops' original role as 'intercessors' on behalf of the poor expanded into a powerful, far-reaching and permanent '*patrocinium*' over numerous categories of person.[655] Previously limited episcopal 'judicial' privileges, based upon the imperial-law institutions of *privilegium fori, audientia episcopalis* and church asylum, were consolidated and enhanced to give the clergy a uniquely powerful position within the administration of justice.[656] This included a right to intervene against other members of society who might be complicit in subjugating the poor, namely the rich and powerful. at Orleans in 549, the bishops restated the obligation, previously defined by imperial edict, of archdeacons or provosts to visit prisoners on Sundays.[657] The same council enacted that anyone freed in church ('...*qui in ecclesiis iuxta patrioticam consuetudinem a servitio fuerint absoluti*,...'), ought to be defended by the churches ('...*cum iustitia ab ecclesiis defendatur*,...'), unless the slave had committed '...*culpas, pro quibus legis conlatas servis revocari iusserunt libertates.*'[658] The reference to '*iuxta patrioticam consuetudinem*' suggests the council saw itself as defining and amending social praxis, as much as 'official' legislation.

Ultimately, this responsibility to intervene on behalf of the poor was articulated as an obligation to oversee the decisions of judges themselves, which represented a significant expansion of the bishops' role in the administration of justice. Tours 567 declared that judges and powerful men (*iudices et potentes*) who dared to oppress the poor were to be

[654] Ullmann, 'Public Welfare'.
[655] '*Patrocinium*' referred to diverse forms of patronage in classical Latin and legislation from fourth century onwards (Wickham, *Framing*, 527); Esders traces growth of episcopal patronage over freedmen back to 440s (*Formierung*, esp. 34 onwards). Brown, *Eye*, 25 on the Roman institution, and 498-509 and the expanding category of '*miseri*' to include free but economically dispossessed; also Scholz, *Merowinger*, 158.
[656] On the 'limited' nature of episcopal judicial privileges, see Chapter One. On the expansion of these privileges at the end of the sixth century, see below and Hinschius, *Kirchenrecht* IV, 858, n. 2; Loening II, 232; Brunner, *Rechtsgeschichte* I, 376.
[657] Orleans 549, c. 20. (MGH, concil. I, 107); cf. CTh 9.3.7 judges to visit prisons every Lord's day).
[658] Orleans 549, c.7 (MGH, concil. I, 102f.) which possibly had in mind *CTh* 4.10.1, but could equally have applied to Frankish laws.

excommunicated if they failed to heed the bishop's initial admonition.[659] This episcopal 'oversight' of judges was later articulated in royal legislation.[660] We shall address the point more fully below, but there is evidence this legislation was not merely aspirational but reflected a widely held view of the episcopal role in the administration of justice. Gregory of Tours mentions Bishop Nicetius of Lyon, sending a priest to halt proceedings at the count of Lyon's court, because he himself had already heard the case in question. Admittedly, the count, Armentarius, refused outright.[661]

Councils also expanded the category of 'the poor' for whom the clergy had an obligation to intercede.[662] Macon 585's seventh canon asserted the episcopal '*patrocinium*' existed over not only those freedmen ('liberti') manumitted in church, but also anyone freed, '*...aut per epistolam aut per testamentum aut per longinquitatem temporis...*'[663] According to the *acta* of Macon, this potentially vast (see Ch.5) section of society was under the jurisdiction or protection of the bishop, who could legitimately intervene on their behalf against secular judges.[664] The bishop might, if he wanted, invite secular judges to adjudicate with him, but he did not have to. The same

[659], Tours 567, c. 27(26), (MGH, concil. I, 135), '*Ut iudices aut potentes, qui pauperes oppremunt, si commoniti a pontifice suo se non emendaverint, excommunicentur.*' Heinzelmann, *Bischof und Herrschaft*, 28 identifies imperial-law antecedents.

[660] See below, *Praeceptio Chlotharii* c. 6: Judges who condemned anyone contrary to law were to be censured by the bishops (in the absence of the king), so that the judge could correct his judgment.

[661] Gregory, *Vita Patrum* 8.3 (ed/trans., E. James, 52f.).

[662] Cf. Rapp, *Bishops*, 242 understated the change implicit in Macon 585's legislation on *manumissio* (below). On the inherent flexibility of the term 'poor', see Brown, *Poverty and Leadership*: 'poor' was considered more of a judicial category in Judaic literature. Brown also traces the emergence of the 'holy poor' i.e. clerics.

[663] Macon 585, c.7 (MGH, concil. I, 167). On *audientia episcopalis*, Esders, *Römische Recht*, 176 onwards. Esders sees the maximalist definition of *audientia episcopalis* at Macon 585 and the Praeceptio Chlothari as Merovingian legislators following the example set in Justinian's legislation. I would argue that it was an organic development (given the tendency to expand the privileges of the Church in C5th and C6th conciliar legislation) seen across the imperial and post-imperial territories. Esders, *Formierung*, 34.

[664] The act ends: '*Sed si placuerit episcopo, ut secum ordinarium iudicem aut quemlibet alium saecularem in audientiam eorum arcessiret, cum libuerit, fiat, ut nullus alius audeat per causas transire libertorum nisi episcopus, cuius interest, aut his, cui audiendum tradiderit.*' (MGH concil. I, 168); See, Loening, II, 237, n.1&2.

'patronage' was claimed over widows and orphans.[665] The council which met at Paris in 614, immediately prior to the promulgation of Chlothar II's Edict, asserted similar rights for the episcopate. It ruled that '*liberti*' stood under ecclesiastical protection, and could no longer be demanded back 'for the fisc' ('*ad publicum*'). Anyone who attempted to deprive them of liberty was to be excommunicated.[666]

In spirit, these episcopal powers were not far removed from the role bishops had played for centuries, settling disputes informally and alleviating the burdens of civil justice for those ill-equipped to deal with it. What was entirely new, however, was the assertion of a right to obstruct the workings of secular justice, (rather than a duty to appeal to the judge's better nature)[667] and that this was articulated, in the first instance, in the legislation of a church council. Thus by the seventh century, Gallic bishops claimed 'jurisdiction' over lower social orders, the *servi*, *liberti* and *coloni*. Canons had come to define key aspects of the post-imperial social classes.

Bishops also asserted 'strong' formulations of both clerical *privilegium fori* and ecclesiastical asylum, which were conflated to a certain extent.[668] Macon 585, c. 9 on episcopal *privilegium fori,* declared it was shameful that bishops should be dragged from their churches by secular authority. Whilst it did not specify this privilege extended to criminal cases, the canon declared that no

[665] Macon 585, c.12 judges cannot arraign widows and orphans without knowledge of bishop or a cleric. They must judge them together with a cleric. Any judges who ignored this were to be excommunicated. (MGH, concil. I, 169f.).
[666] Paris 614, c.7(5) (MGH, concil. I, 187); on the expansion of the social class of freedmen '*liberti*' – see below.
[667] Contrast the supposed ability of bishops to oversee the decisions of judges in legislation of Chlothar II (below), with Avitus, Ep.55 (Shanzer and Wood, *Avitus*, 291) to Ansemundus (*comes* of Vienne) concerning the rape of a nun. Avitus the most powerful bishop of the Burgundian region was powerless to act when a nun was raped by a high-status individual. He was forced to seek Ansemundus' help.
[668] On the sixth-century expansion of asylum Loening, *Geschichte* 1878, 563ff.; and Scholz, *Merowinger*, 159; Esders, 'Rechtsdenken', 97 – 125 esp. 113, n. 83&84; ibid. Rechtstradition, 306-9; cf. Pontal, *Synoden*, index, '*Asylrecht*'.

secular power could drag a bishop from his church.[669] Macon c. 585, c. 10 made explicit that this *privilegium fori* applied to clerics not just bishops.[670]

Under the functioning Empire, episcopal *privilegium fori* was not usually thought to apply in criminal cases.[671] Likewise under the Visigoths, the Breviary of Alaric, had opted for a distinctly limited version of ecclesiastical *privilegium fori*.[672] However, the bishops at Macon seem to have modelled their canons partly upon the Sirmondian Constitutions, the third of which constituted an open-ended confirmation of episcopal *privilegium fori*.[673] As Nissl pointed out, Macon effectively capped a trajectory, developing since Orleans 538, in which the *privilegium fori* was gradually strengthened.[674] Later, Paris 614 reiterated this 'maximalist' version of clerical *privilegium fori*: c.4(6) forbad any secular judge to punish a cleric without the knowledge of the bishop, on pain of being excommunicated.[675] Canonical legislation from the end of the sixth century also asserted 'new' legal privileges for bishops and clerics, most of which grew out of the tendency for post-imperial church councils to define their own legal benefits. Councils declared that the testaments of bishops and clerics were to be valid, even if they did not conform with formulae prescribed by secular

[669] '..., *ut episcopum nullus saecularium fascibus praeditus iure suo contumaciter ac perpere agens de sancta ecclesia, cui praeest, trahere audeat;...*' (MGH, concil. I, 168); See W. Hartmann, 'Der Bischof als Richter Nach den kirchenrechtlichen Quellen des 4. bis 7. Jahrhunderts', in *La Giustizia Nell Alto Medioevo* (1994), 805-842, esp. 818 onwards.

[670] Macon 585, c.10 (MGH, concil. I, 170).

[671] CTh 16.2.23 (376); Humfress *Orthodoxy*, 162.

[672] Chapter Two.

[673] Sirm.3 (Pharr, *Theodosian Code*, 478): 'We sanction that the name of bishop or of those persons who serve the needs of the Church shall not be haled before secular courts, whether courts of the judges ordinary or those of extraordinary judges.' See Vessey, 'Origins'.

[674] A. Nissl, 'Zur Geschichte des Chlotharischen Edicts von 614', in MIÖG (1894) 365 – 384 at 367; also, ibid. *Der Gerichtsstand des Clerus im fränkischen Reich* (Innsbruck, 1886); Bruns, II, 201-5; cf. Loening and Sohm who took divergent views on the strength of clerical immunity (summarized by Nissl, *Gerichtsstand*, 6).

[675] Also N.B. Paris 614, c.13(11) trials between bishops cannot be conducted before a secular judge. (MGH, concil. I, 189).

law;[676] and that kings and judges could not interfere with the private property of a deceased archdeacon or cleric, until after the will had been read.[677]

In summary, Gallic conciliar legislation towards the end of the sixth century remoulded legal privileges, originally defined in imperial legislation, to stake-out what was in effect a kind of judicial immunity for both the clergy *and* the tenants of church lands. In section 4.C, it will be argued that there are hints this extensive episcopal *patrocinium* and *privilegium fori* projected in the conciliar legislation was matched in practice, by the way people interacted with secular and ecclesiastical modes of justice.

From the mid-to-late sixth century, the form of canonical legislation continued to evolve. Gallic councils regularly invoked the inherent authority of their legislative tradition both in prefaces and canons themselves.[678] The rhetoric of the Gallic conciliar *acta* expanded to include juridical as well as moral authority.[679] As has already been noted, the joint council of Orleans 533 (convened by Theuderic, Childebert and Chlothar) contained the first articulation of the idea that the council met to uphold '*lex catholicae*'.[680] Thereafter, Gallic councils (and particularly the large 'unifying' councils at Orleans, and later Macon and Paris, see Ch.5) became explicit in asserting that their regulations held the authority of *lex Dei*, whilst at the same time also making explicit that they were generating new legislation. The preface to Orleans 549 is typical:

[676] Paris 614, c.12(10) (ibid.).
[677] Paris 614, c.9(7) (ibid., 188).
[678] Vessey, 'Origins', 196, this was common by the late sixth century. He highlights Lyon 570 as a prime example: (MGH, concil. I, 139:) '*Cum in nomine Domini in Lugdunensi urbe ad synodale concilium venissemus tam pro renovandis sanctorum patrum institutis, quae praesentis temporis necessario fecit opportunitas iterari, quam his,...*'.
[679] Hess, *Development*, 77-81 outlines the 'underdeveloped' fourth- and fifth-century notion of conciliar authority and the first signs of claims upon 'juridical' authority in conciliar legislation from fifth-century North Africa.
[680] Scholz, *Merowinger*, 107ff; MGH, concil. I, 62. '*Cum ex praeceptione gloriosissimorum regum in Aurilianensem urbem de observatione legis catholicae tractaturi Deo auxiliante convenimus ibique,...*'.

> *'Ad divinam gratiam referendum est, quando vota principum concordant animis sacerdotum, ut, dum fit pontificale concilium, normam vivendi teneat recapitulatio antiqua canonum, vel, ut locus tempusque est, in quibuscumque titulis veteribus adherens nova constitutio sanctionum.* ...[681]

The Council's overarching aim was to preserve the '*normam vivendi*' by the restating old canons and/or retrofitting old chapters in accordance with current circumstances. It continued:

> *Igitur... Childeberthus rex pro amore sacrae fidei et statu religionis in Aurelianinsi urbi congregasset in unum Domini sacerdotes, cupiens ex ore patrum audire, quod sacrum est et quod pro ecclesiastico ordine auctoritate prometur pastorali, ut venientibus sit norma et praesentibus disciplina: quae conveniant a praesenti tempore in posterum custodiri, praestante Deo signanter est titulis praenotatum.*'

The 'pastoral authority' of bishops included the ability to lay down 'chapter-by-chapter' decrees or norms to bind [Christians] in the present and the future; i.e. to issue new legislation in addition to interpreting existing custom.

Gallic bishops also engaged with and amended imperial law more explicitly. Macon 585, c.8 which affirmed an extensive definition of ecclesiastical asylum, declared that no-one of any rank was permitted to accost a person seeking refuge in a church, saying '*Si enim mundani principes suis legibus consuerunt, ut, cuicumque ad eorum statuas fugiret, inlesus habeatur, quanto magis hi permanere debeant indemnati, qui patrocinia inmortalis regni adepti sunt celestis*'.[682] The comparison of churches with the statues of secular

[681] Orleans 549, pref. (MGH, concil. I, 100f.).
[682] Macon 585, c. 8 (MGH, concil. I, 168), N.B. the canon added the caveat that if they were guilty of a crime, they must disclose it to the bishops, that he might decide

princes echoed the Council of Carthage 407's request for the ability to appoint its own *defensores*, just like the provincial high-priests. The difference was that the bishops at Macon made the change themselves, rather than asking the emperor for permission.[683] Church councils became the organs for retrofitting imperial law for the post-imperial age, but in doing so they transformed their own legislative ability and the way in which conciliar legislation was perceived.[684] This was a two-way process. Canons were brought closer to Roman law, but Roman law was also shifted onto an episcopal ideological paradigm. As Esders has pointed out, bishops justified their rules according to their own values, especially *misericordia*.[685] However, they also implicitly appropriated the values and aspirations of imperial legislation, characterising their legislation as produced '*pro causis publicis*'.[686] (Bishops turned the prevention of *calumnia,* including: false witness statements, spurious litigation, into a 'religious virtue').[687]

Conciliar prefaces became more ornate, proceedings were recorded in greater detail, and there are indications the attendees thought about how to disseminate their disciplinary decisions throughout society. Macon 585 had a lengthy preface. It was also the first Gallic council to record its proceedings in detail, in a manner akin to the 'minutes' taken at Chalcedon 451.[688]

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whether to give them up or not. See Loening, II, 237, n.1&2. Pontal, *Synoden*, 165 suggests the canon confirmed Orleans 549, c.22, which itself cited '*sicut antiquis constitutionibus tenetur scriptum*' (MGH, concil. I, 107f.) but only concerned slaves who had fled to churches See also, Macon 585, c.13 'When all things that concerned human and divine law had been considered and brought completely to an end...' (they moved on to bishops keeping dogs and falcons). (MGH, concil. I, 170); and Macon 585, c.14 those people who had defrauded the poor from their lands were considered to have violated '*canones et leges'* (ibid.)

[683] Above, p.45.

[684] As has already been noted, sixth-century councils cited imperial (and Merovingian) legislation: Halfond, *Archaeology*, 10; Jonkers, 'Application'.

[685] Esders, Rechtsdenken und Traditionsbewusstsein', 113, n. 83&84.

[686] Macon 581/3 pref., (MGH concil. I, 155).

[687] Uhalde, *Expectations*, 10.

[688] It is possible that this format was a conscious imitation of Chalcedon and intended to appropriate some of its 'ecumenical' authority. Cubitt argued for similar motivations behind the Lateran Council of 647 and even highlighted Toledo 589 as a potential early exemplar of a successor regime imitating an ecumenical council as part of a strategy of legitimation. C. Cubitt, 'The Lateran Council of 649 as an Ecumenical Council', in R. Price

Interventions by specific bishops were recorded: Praetextatus of Rouen and Pappolus of Chartres suggested additional protection for freedmen and the council responded unanimously to implement their new rule extending their *patrocinium*.[689] Tours 567 addressed a lengthy letter detailing its decisions '*ad plebem'*. [690] Royal legislation sometimes implied that churches provided a mechanism for promulgating law of all types. The Edict of Chilperic mentioned that '*Illas et marias qui nuntiabantur ecclesias nuntientur consistentes ubi admallat*';[691] while the *Praeceptum* of Childebert I noted that the legislation was '...*data per ecclesias sacerdotum vel omni populi*.' [692] The nearest antecedent to churches serving as distribution points for normative legislation was Augustine's suggestion to read out doctrinal canons in church during the Donatist dispute in North Africa.[693]

As with their citation of 'secular law', Gallic church councils towards the end of the century made more extensive use of compilations of canon law in the formulation of their legislation. Vessey identified the influence of the long recension of the Sirmondian Constitutions at Macon 581/3, in addition to a greater knowledge and willingness to reference prior canon law than acts of councils even a decade or so earlier.[694] These changes were adumbrated in earlier periods of innovation, e.g. in Hilary of Arles' councils in the 430s/40s, or the innovative approach behind the *Statuta Ecclesiae Antiqua*, which was cited at Agde 506.[695] Nonetheless, Vessey is surely right that the 580s were notable for the extent to which canonical legislation was reshaped, systematised and converged with imperial law.

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and M. Whitby eds. *Chalcedon in Context, Church Councils 400 - 700* (Liverpool, 2009; paperback 2011), 133 – 148 at 138

[689] Macon, 585, c.7; above, p.176.

[690] Pontal, *Synoden*, 128.

[691] MGH LL 2.1 ed. Boretius (Hannover, 1883), 9.

[692] Below, p. 195.

[693] Above, p.68f.

[694] Vessey, 'Origins', 193; Macon 581/3 contained verbatim quotations or explicit references to acts of Epaon 517, Clermont 535 and Orleans 538 in contrast with limited citation of canons at earlier councils like that of Lyon 570 also from the Burgundian region.

[695] Klingshirn, *Making*, 100.

The sophisticated and influential systematization of canon law, the *Collectio Vetus Gallica*, which was implemented at roughly the same time as the acceleration in conciliar activity and the convergence of royal and ecclesiastical law-making outlined below (i.e. from 585 onwards), further corroborates the idea that there was a desire to strengthen or uphold canonical legislation towards the end of the century.[696] The *Vetus Gallica* was created, probably at Lyon, at some point between 585 and 626/7.[697] Its *Urform* contained:

- Apostolic Canons (from Dionysius' second recension);
- Greek conciliar canons, drawing from the councils of:
    - Nicaea 325
    - Antioch (c.341)
    - Laodicea (pre-380)
    - Chalcedon 451
    - (and a handful of canons from Ancyra, Gangra, and Serdica)
- The *Statuta Ecclesiae Antiqua* (labelled as African councils);
- Gallic conciliar canons from Arles 314 to Macon 585.
- A single papal decretal of Innocent I.[698]

It rearranged these materials systematically according to the following subjects:

- clerical office (qualification for office, ordination etc.)
- the relative status of monks, clergy and laymen
- property (exchange, protection, title deeds)
- sacraments
- feast days

[696] Mordek, *Kirchenrecht*.
[697] Ibid., 62 – 82.
[698] Innocent to Decentius of Gubbio (JK 311), Mordek, *Kirchenrecht*, 40.

In contrast to sixth-century Gallic councils, which reaffirmed all kinds of norms (including imperial laws), the *Urform* of the *Vetus Gallica* focused narrowly upon conciliar canons. It contained neither imperial laws, nor even Gallic conciliar acta that cited or referenced imperial laws as precedents.[699] Similarly, the editors of the *Urform* chose to use Gallic conciliar legislation even on subjects where relevant papal decretals or Roman conciliar canons existed and would almost certainly have been available to them.[700] This exclusivity might suggest that the editors of the *Vetus Gallica* aimed to promote the inherent authority of episcopal canons, (an inference supported in 4.C, which highlights new emphasis upon the integrity of canonical norms and episcopal 'jurisdiction' c.570 – 600). The quality of compilation and the level of distribution for canonical legislation appear to have 'increased' at the end of the sixth century.[701] In spite of the *Vetus Gallica's* wide distribution, however, regional collections persisted in Merovingian Gaul, which perhaps speaks to the relative autonomy of the episcopate in defining and shaping canon law.[702]

Conciliar judgments and 'transactional instruments'

From the mid sixth century, Gallic councils produced documents resembling 'formal' judgments, which parties valued and could cite in order to win their side of the argument or demand a punishment against a cleric was enforced. The trial of Bishop Saffaracus, at Paris in 551/2, provides an early

[699] Despite drawing heavily from the *Statuta Ecclesiae Antiqua* and Macon 585, for example, it contained neither Vaison 442, c. 9 (on foundlings), nor Macon 585, c. 8 (on asylum), which cited imperial law as precedent.
[700] E.g. on church property. (See below). This perhaps echoes the role of Pope John II, in the trial of Contumeliosus, who had explicitly limited his intervention to the question of episcopal discipline and specified his visitor would not make decisions on church property.
[701] On distribution of the VG, Mordek, *Kirchenrecht*, 97-107, 120 and 206-08; Ewig, *Merowinger*, 104 suggests its distribution was promoted by Chlothar II's unification of the kingdoms.
[702] Elliot, 'Influence', 718-30 who also expands on Mordek's hypothesis that VG influenced the *Collectio Wigorniensis* in Anglo-Saxon England.

example.[703] According to the document, Saffaracus had already been deposed by a deputation of bishops and clergy (drawn from all across Gaul) for an unspecified crime.[704] King Childebert I had convened the synod to ratify their preliminary decision. The judgment was comprised of the following components:

- A statement of the synod's royal convocation and purpose.[705]
- Confirmation that the original deputation of bishops had presented their decision against Saffaracus to the council; that Saffaracus had made a voluntary confession, and this had been witnessed by another bishop.[706]
- The original judgment and sentence (Saffaracus was to be deposed and confined to a monastery) and a declaration that he had been unanimously affirmed by the synod.[707]
- A statement that, in light of his confession and transgression of the canons of the synod of Orleans (549,

[703] MGH, concil. I, 115-17; (MSS: Berlin 435, fol.172; Paris lat. 3846, fol.181'; Vatican 3827, fol.123); cf. Gregory *LH* 4.36; Pontal, *Synoden*, 101f.

[704] 27 attendees, whose sees were not listed but have been identified as coming from as far afield as Arles, Vienne, Sens, Bourges and Trier (to name the metropolitans); i.e. from the kingdoms of both Childebert and Theudebald –the former having convened the council. Pontal, 102; Wallace-Hadrill, *Frankish Church*, 101.'

[705] The council met '*ad invitationem domini regis Childiberthi*',... …*ad ecclesiasticum ordinem vel fidei chatholice auctoritatem pertinent,...*'.

[706] '*Quae per ordinem relegentes cum venissemus ad locum, ubi eius confessio de crimine tenebatur, quam presentibus sanctis ac venerabilibus viris episcopis Medouecho, Leubeno vel Laubachario abbate, Hiculfo presbytero, Aeterno archidiacono necnon et Castricio diacono professus fuerat memoratus quondam episcopus Saffaracus, ipsos denuo interrogantes supra scripti professionem nobis denuo ore proprio retullerunt. Quod etiam facinus necnon et episcopus Ardaricus a memorati Saffaraci ore se etiam veredica adsertione audisse perdocuit*.'

[707] '*...quia sine dubio culpa eius esse capitales canonum auctoritate monstratur, utique confessione propriae linguae dejectione ipse se fecit obnoxium*.' (MGH, concil. I, 116-17).

c.12), the archbishop was requested to ordain a replacement.[708]

- finally, the subscriptions of the 26 episcopal attendees.

As we shall see in Section 4.C, the procedural checklist encompassed in the Saffaracus judgment matches that followed in the trial of Bishop Praetextatus of Rouen (and, to an extent, certain aspects of the resolution of the Nuns' revolt at Radegund's Nunnery of the Holy Cross at Poitiers).[709] Both included a free confession from the accused party, a unanimous verdict from the judging bishops and confirmation that the act was a crime according to '*auctoritate canonum'*. The *acta* of provincial councils were no longer merely articulations of church tradition; in Merovingian Gaul the genre expanded to encompass binding interpretations of this tradition in relation to specific disputes.

Conciliar canons were also generated for transactional purposes, to establish the 'terms of use' for new religious foundations. We are addressing here the emergence of 'episcopal privileges' (or 'exemptions'), i.e. concessions granted by bishops to (usually) monasteries, in which they agreed not to intervene in the affairs of the foundation.[710] Since Chalcedon, and increasingly over the sixth century in Gaul, bishops had the right to oversee monastic foundations (i.e. to discipline its inhabitants/absconders, exercise control over the endowment and to influence the appointment of the abbot/abbess). Lay

[708] '*Igitur tam aperta confessione secundum sententiam canonum, que de huiusmodi transgressione in Aurilianense synodo nuper habita sunt decreta, a metropolitano, cui redigendi actio vel ordinatio de conprovintialibus cius ecclesiae manet, in memorata urbe scripta serventur ac regulariter peragantur, ut discipline modus maneat et, qui tanto ordine presunt, adiuvante Christo bene vite auctoritate viventes, quod ordinem sacrum poscit, id ordinare provideant, ut nec falsa obiectio culpe maculet innocentes et illi, qui inventi et conprobati in culpa fuerint, in nulla districtione habeantur inmunes.'*

[709] Below, p. 216.

[710] A.C. Murray, 'Merovingian Immunity Revisited', *History Compass* 8 (2010), 913 – 28 for an historiographical *status quaestionis*; S. Wood, *Proprietary Church*, 193; Rio, *Formularies*, 138-31 and 179; Halfond, *Archaeology*, 43; Murray, 'Immunity, Nobility and the Edict of Paris'; Rosenwein, *Negotiating*, 9-18 and 35-36; Lesne, Hist. Prop. II, 260-67.

founders needed their consent in order to set up and run 'orthodox' (i.e. legitimate) religious foundations.[711] In later periods bishops granted 'exemptions' to foundations, which waived or limited their ability to exercise such oversight. (They are usually seen as a seventh-century phenomenon in Gaul and associated with the arrival of Columbanus and other Irish ascetics, who sought to establish their own religious foundations free from the existing Gallic episcopal hierarchy, yet with direct patronage from the Merovingians).[712]

Episcopal privileges/exemptions are intertwined in several dense and intractable historiographical debates.[713] However, they are also directly relevant to the changing nature of sixth-century conciliar legislation in Gaul. Two early exemptions, or proto-exemptions, from the second half of the sixth century were effectively just conciliar legislation generated for specific foundations.[714]

Church councils had produced 'general' regulations to govern the terms on which wealthy laypeople could donate their wealth to the church and

[711] Ch.1.

[712] On seventh-century foundations linked to Columbanus see P. Riché, 'Columbanus, his followers and the Merovingian Church', in H. Clarke and M. Brennan eds. *Columbanus and Merovingian Monasticism* 59 – 72; Columbanus seems to have preceded the expansion of monastic immunities in the North and North-East of Francia, F. Prinz, 'Columbanus, the Frankish nobility and the territories east of the Rhine', in ibid. 73 – 87. P. Classen, *Kaiserreskript und Königsurkunde. Diplomatische Studien zum Problem der Kontinuität zwischen Antike und Mittelalter. Zweiter Teil* (1956), emphasizes the Irish impetus whilst acknowledging early exempla. Cf. S. Wood, *Proprietary Church*, 105-7 argues rise of cult of saints gave new energy to church foundation.

[713] Questions included, was there one type of exemption or many? (Rosenwein, *Negotiating*, 5 n.8); were they conceptually distinct from royal immunities? (ibid., 11, n.29 contra Ewig); did exemptions (and privileges) destroy public power (whether episcopal or monarchical), or were they an expression of it? Since exemptions were often solicited from the episcopate by a monarch, they became relevant to debates on the balance of royal/episcopal power. (Murray, 'Immunity', 918). A second area of dispute is over the origins of episcopal privileges: was the *introitus* prohibition central to ecclesiastical asylum rooted in Roman law or new ideas about sacred space? (Rosenwein, *Negotiating*, 25; Murray, 'Immunity', 926 criticizes Rosenwein's argument as teleogical; cf. Esders, 'Rechtsdenken' below). Were the quasi-independent foundations they facilitated Germanic or Roman in origin? (S. Wood, *Proprietary* argues convincingly not); did the documents themselves have authority? See below.

[714] Cf. Cubitt, *Councils*, 197 notes that the conciliar *acta* of Chelsea 816 closely mirrored the six types of exemption Ewig identified in Merovingian privileges.

specifically to agree that their gifts would not be misused by the clergy.[715] However, from at least 549, councils issued statements relating to specific foundations, the effect of which was to turn the conciliar canon itself a binding, quasi-legal 'instrument', i.e. a document with enough perceived value for parties to 'cite' its contents in order to uphold part or all of the agreement.[716] These 'transactional canons' were first obtained by kings, who sought to protect the investments they made when founding or endowing religious institutions. Orleans 549, for example, aimed to secure the future of a *xenodochium* Childebert had recently founded with his consort, Ultrogotha, in Lyons.[717]

The council of Orleans updated the existing general legislation against despoilers of church property, so it explicitly also protected *xenodochia* along with *ecclesiae* and *monasteria* already mentioned in canonical legislation.[718] However, it also issued a second, longer 'canon', addressing the regulations and

[715] Halfond, *Archaeology*, 114: Orleans 541, c. 11; Eauze 551, c.6; Paris 614, c.8.
[716] The use of this term is contentious, see below.
[717] A *xenodochium* was a 'poorhouse-cum-hospital', which originated in the East in the fourth century according to Brown, *Poverty* , 33 – 34. They are attested in Gaul from the mid-fifth century, but common in the sixth, see T. Sternberg , *Orientalium More Sectus. Räume und Institutionen der Caritas des 5. Bis 7. Jahrhunderts in Gallien* (Münster, 1991), 147ff.; B. Schneider, *Christliche Armenfürsorge: Von den Anfängen bis zum Ende des Mittelalters* (Freiburg, 2017)., 123-25, at 24 contrasts the clear definition and regulation of *xenodochia* in the Justinianic Code in the East vs. ambiguity in West. How 'common' they were in Gaul is questionable – perhaps a qualified minority of episcopal and monastic institutions hosted them: Horden counts only 34 in Merovingian Gaul and these mostly concentrated in the north east: P. Horden, 'The Earliest Hospitals in Byzantium, Western Europe and Islam', *The Journal of Interdisciplinary History*, vol. 35 no. 3, *Poverty and Charity: Judaism, Christianity, and Islam* (Winter, 2005), 361 – 389, at 379; for Gaul, Horden cites W. Schönfeld, 'Die Xenodochien in Italien und Frankreich im frühen Mittelalter', in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung*, XII (1922), 1 – 54, who surveys both textual and archaeological evidence.
[718] Orleans 549, c. 13 (MGH, concil. I, 104), '*Ne cui liceat res vel facultates ecclesiis aut monasteriis vel exenodociis pro quacumque elemosina cum iustitia deligatas retentare, alienare adque subtrahere. Quod quisque fecerit, tanquam necator pauperum antiquorum canonum sententiis constrictus ab ecclesiae liminibus excludatur, quamdiu ab ipso ea, quae sunt ablata vel retenta, reddantur.'* This is the first reference to *xenodochia* in Gallic legislation. They are not attested in earlier councils, non-Gallic canons, Roman, Frankish, Burgundian or Visigothic laws. The canon otherwise mirrors earlier conciliar *acta* protecting the property of *ecclesia* only, e.g. Agde 506, c. 26 and Orleans 541, c.25.

material position of Childebert's particular foundation.[719] This canon stated that the bishops had already agreed and subscribed to the organisation and material resources of the foundation.[720] It stated that the bishops had considered it prudent to reaffirm the specifics of this document.[721]

The form of the document is important. The *bishops* decreed, they did so whilst invoking God and specifically with the lasting authority conferred by conciliar unanimity. The canon stipulated that :

- No future bishop of Lyon would misappropriate the *xenodochium*'s property (either for himself or his '*ecclesia'*).[722]
- Nor would his successors alter anything concerning the customs or constitution of the foundation.[723]
- Furthermore, the council decreed that bishops of Lyon would attend to the stability of the foundation and appoint effective administrators, who would act in accordance with the foundation's 'constitution', which they had imposed ('*secundum inditam institutionem*').[724]
- Finally, they decreed that if anyone, of any rank, (i.e. possibly, whether clerical or secular), contravened this document ('*constitutionem nostram'*), they would be struck by '*inrevocabili anathemate*'.

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[719] Orleans 549, c.15, (ibid., 105), '*De exenodocio vero, quod piissimus rex Childeberthus vel iugalis sua Uulthrogotho regina in Lugdunensi urbe inspirante Domino condiderunt,...*'

[720] Ibid., *'..., cuius institutionis ordinem vel expensae rationem petentibus ipsis manuum nostrarum subscriptione firmavimus, ...'*

[721] Ibid., To decree again *'...pro Dei contemplacione iunctis nobis in unum permansura auctoritate...'*.

[722] ibid. '*...nihil exinde ad se quolibet tempore antestis ecclesiae Lugdunensis revocet aut ad ius ecclesiae transferat,...*'

[723] ibid., *'..., ut succedentes sibi per temporum ordinem sacerdotes non solum aut de facultate exenodocii ipsius aut de consuetudine vel institutione nil minuant,...*'

[724] '*..., sed dent operam, qualiter rei ipsius stabilitas in nullam partem detrimentum aut deminutionem aliquam patiatur, providentes intuitu retributionis aeternae, ut praepositi semper strenui ac Deum timentes decedentibus instituantur et cura aegrotantium ac numerus vel exceptio peregrinorum secundum inditam institutionem inviolabili semper stabilitate permaneat*.'

The bishops at Orleans thus amended the 'general' canonical legislation, produced some form of document (non extant) to confirm the internal regulations of the specific foundation, and issued a second canon, which publicly reaffirmed the terms they had agreed for the preservation of the foundation.[725] The process sounds quite similar to that which produced two 'letters' written in relation to the foundation of Queen Radegund's nunnery at Poitiers. Gregory of Tours transcribed these letters verbatim into his History.[726] Radegund's documents are particularly valuable sources since Gregory described them being cited during the course of the Nuns Revolt. (See below).

The contents of Radegund's foundation made it peculiarly important in political as well as religious terms, and it is likely for this reason that special care was taken to define the terms on which the nunnery ran and to specify which churchmen were responsible for its management. The nunnery was founded in 552 by Queen Radegund, wife of Clothar I (r.511 – 561).[727] Radegund later obtained a fragment of the Holy Cross from Byzantium, shortly after Sigibert completed an alliance with the Eastern Emperor, Justin II, against the Lombards. The alliance might even have been sealed with the transfer of the relic westwards.[728] Shortly after the relic was translated into the nunnery in 567/8, Clotild, daughter of the deceased Charibert I, and Basina, daughter of Chilperic I, (i.e. princesses of the recently defeated Neustrian branch of the Merovingian

[725] A similar example is Valence 583/5, which Fredegar says Guntram called to confirm his new monastery of St Marcellus. MGH, concil. I, 162f.; Fredegar, *Chronica*, 6.1.
[726] Radegund to the Bishops: LH 9.42 Thorpe, *History*, 535-38; MGH, SS Merov. I, 470-74; '*Exemplar Epistulae. Dominis sanctis et apostolica sede dignissimis in Christo patribus omnibus episcopis Radegundis peccatrix*. ...'
The bishops' reply to Radegund: LH, 9.39; MGH, SS Merov. I, 460-63; (English translation) Thorpe, *History*, 527-29.
[727] J. Nelson, 'Queens as Jezebels: Brunhild and Balthild in Merovingian History', *Politics and Ritual in Early Medieval Europe* (London, 1986), pp. 1 - 48, first published in *Medieval Women*, ed. D. Baker (Oxford, 1978), pp. 31 – 78, p.5 Radegund's transition from royal to ascetic status was 'exceptional' for Merovingian Gaul. On the foundation, Hauck, *Kirchengeschichte*, I, 183; On Gregory's presentation of the revolt, Heinzelmann, *Gregory*, 71-93.
[728] Esders, 'Avenger', 36.

dynasty; Charibert's kingdom was divided between Sigibert and his brothers in 568) also both became members of the nunnery.

However, the bishop of Poitiers, Maroveus, seems not to have been a reliable partner for Sigibert and also held certain grievances against Radegund. He had initially refused to translate the relic into the nunnery, forcing Sigibert and Radegund to hold the fragment temporarily in a monastery.[729] It was during this delay that the 'foundation letters' (below) were issued. According to established canon law, Maroveus ought to have had control of the nunnery as a foundation within his diocese.[730] However, a special arrangement was put in place to ensure the nunnery was overseen by the episcopate as a whole. It was perhaps intended to protect Sigibert's investment from Maroveus and/or to create accountability for the other branches of the Merovingian dynasty, whose relatives were housed there.

The first document ("**Radegund's Foundation Letter**") was a letter from Radegund to the bishops of Gaul. In it, she sought to place the material wealth of her foundation under the protection of the episcopate. She also made explicit that she had already secured written documents and oaths from various kings in order to protect the endowments of her nunnery and that she had enlisted various kings as protectors.[731] In light of later events, it seems that enlisting the collective Gallic episcopate to oversee the nunnery (rather than relying on Maroveus alone) was an effective strategy in ensuring that the various kings fulfilled their obligations to protect the nunnery *and*, crucially, that they did so in accordance with established church procedure. Radegund's Foundation Letter asked the bishops to assist in upholding these same proprietary and administrative arrangements, in addition to their confirmation of the foundation's organisational rules (she had adopted Caesarius' *Regula Virginum*) and administrative independence. She requested that the bishops

[729] Rosenwein, *Negotiating*, 55-60, suggests Maroveus' dispute with the nuns arose from the fragment of the Holy Cross being installed in the nunnery.
[730] Chalcedon 451, c.4 (L'Huillier, *Church*, 219-22 with commentary).
[731] MGH, SS Merov. I, 471 line 19 onwards to p.472 l.2 ('*De rebus... ...regum Chariberthi, Guntchramni, Chilperici et Sigiberthi cum sacramenti interpositione et suarum manuum subscriptionibus obtenui confirmari*;').

actively uphold the terms of letter and excommunicate those who transgressed it in any way. Radegund's Foundation Letter contained the following components:

- Background rationale for establishing a foundation (the equivalent of an *arenga*).[732]

- Confirmation that Radegund had handed over property; accepted the *Regula Virginum*; gained local and wider episcopal approval; chosen an appropriate abbess to whom she herself submitted.[733]

- A request for protection,[734] in the event that anyone, lay or clerical ('..., *si quaecumque persona vel loci eiusdem pontificex seu potestas principis vel alius aliquis*...),
    - disturbed the community;
    - broke the rule or tempted a nun to break the rule;
    - appointed a new mother superior;
    - (from within the community) rose in revolt;
    - claimed new jurisdiction over the nunnery;[735] or
    - misappropriated the property of the nunnery.

- The letter continued with a request directly to the bishops. If any of the above circumstances arose, they were requested to take the following actions:[736]
    - The bishops would appeal to the king and commend the institution to him.

[732] ibid., 470, lines 6-9 (*Congruae provisionis... ...poterit interventum*.').
[733] ibid., l.9 – p.471, l.1 ('*Et quoniam... ...oboeditarum conmisis*.').
[734] ibid., 471, l.5 – 472, l.18 ('*Sed quoniam... ...contradictores et persecutores*.')
[735] This stipulation could only have made sense in Merovingian Gaul, where bishops asserted an ability to articulate legal privileges in their own canons.
[736] ibid., 472, l.19 – 473, l.12 (*Tuo quoque, beati... ...in regno*.')

  - They themselves would strive for justice ('*...contra aliorum iniustitia exsecutores et defensores iustitiae laborare,...*').
  - There followed a statement from Radegund that no catholic king should permit the nunnery to be torn down, and that princes would protect the abbess. (The implication being presumably that the bishops had a responsibility to obstruct or advise against any such action).

- The Letter then requested that Radegund be buried at the nunnery.[737]

- Radegund requested that the bishops preserve her petition in the archives of their cathedral churches.[738]

- Finally, Radegund commended her foundation to the bishops.[739]

We shall see in 4.C how this document was used, but its contents already indicate that Radegund enlisted the support of the bishops in order partly to mitigate malfeasance by any one king or bishop and in order to give her Letter support from many regions (she addressed all bishops and sought to lodge the document with the 'universal church') and over time (via the episcopal archives).

The reply Radegund received from the bishops, ("**the Episcopal Foundation Letter**"), was narrower in scope than her original request.[740] It endorsed the basic premise upon which the nunnery was founded and confirmed the *Regula Virginum* as a binding constitution. The Episcopal Foundation Letter contained:

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[737] ibid., 473, ls.13-20.
[738] ibid., 474, l.1-2. '*Et ut haec supplicatio mea, quam manu propria subscripsi, ut in universalis aeclesiae archevo servetur,...*'
[739] ibid., 474, l.7.
[740] ibid., 460, l.22, '*EXEMPLAR EPISTULAE. Dominae beatissimae et in Christo ecclesiae filiae Radegunde Eofronius, Praetextatus, Germanus, Felix, Domitianus, Victurius et Domnolus episcopi. ...*'

- A lengthy prologue outlining God's beneficence, the history of Catholic faith in Gaul, and the direct line running from the Apostles, to St. Martin, to Radegund's, which they confirmed as proper and orthodox.[741]

(Essentially, it contextualised the rationale for establishing a women's monastery, as a preface to a series of formal episcopal rulings given in response to Radegund's petition (the equivalent of the '*dispositio'*):

- In response to Radegund's Letter, the bishops had 'confirmed' ('*firmamus*') that women who joined the monastery were to live according to the rule of Caesarius, and would never have the right to leave , since they had made a promise to God of their own free will.[742]

- Punitive clauses included sanctions (excommunication and anathema) against any nun who left and anyone who advised or assisted a nun breaking her vow and entering into a marriage (the same punishment).[743]

- A further clause added that any future bishops must be bound by these decrees, and that any subsequent bishop who relaxed any part of the rule would have to defend themselves before the founding bishops upon the Day of Judgment.[744]

- Finally, the seven authors of the Foundation Letter subscribed their names in order that what they had decided and decreed

[741] ibid., 461, l.1 – p. 462, .9 (*Sollicita sunt... ...suo vult amplexu servare.*').
[742] ibid., 462, ls. 10-21. ('*Et quia... ...in honore*.').
[743] ibid., 462, l. 21 - 463, l.9 ('*Et ideo si,... ...et adnecti*.').
[744] ibid., 463, ls. 10 - 14 ('*Adicientes etiam, ut eorum, qui nobis quandoque successuri sunt sacerdotes,... ...quod Christo promittitur inviolabiliter observetur*.').

> would have full authority and to ensure that Christ would watch over it.[745]

With this letter of response to Radegund, the seven signatory bishops applied the rationale, language and enforcement mechanisms of normative conciliar legislation to create an *ad hoc* binding agreement. The signatories included Eufronius (Gregory's predecessor at Tours), Praetextatus (Rouen), Germanus (Paris), Felix (Nantes), Domitianus (Maastricht), Victorius (Rennes), Domnolus (Le Mans).

The Foundation Letters were sought in addition to documents from other sources of authority. Radegund's Foundation Letter mentioned charters from other kings. Likewise, we know that later in the 590s another queen, Brunhild, obtained a letter from the pope exempting her foundation at Autun from episcopal control.[746] As we shall see in 4.C, the Foundation Letters were stored in episcopal archives. The events of the revolt demonstrate that the documents were effective in influencing the jurisdiction and parameters by which subsequent disputes were resolved. The episcopal documents themselves were perceived to hold water. Furthermore, Gregory's account makes no mention of any other types of document being cited, whether royal edicts or Roman-law testaments, (despite Radegund claiming in her letter to have sought them).

[745] ibid., '*Quod nostrae determinationis decretum pro firmitatis intuitu propriae manus subscriptione credidimus roborandum, perpetualiter a nobis Christo auspice servaturum*.'
[746] Wood, *Kingdoms*, 193; Gregory I, *Register* XIII, 7, 11, 12, 13.

4.B Royal Merovingian legislation and canon law

While the earliest attempts at law-making in the Frankish realm do not appear to have addressed ecclesiastical or religious matters directly, from the middle of the sixth century onwards Merovingian rulers used their own legislation to address ecclesiastical legislative concerns and to embrace 'canon law' as a fundamental component of public authority.[747] It is hard to imagine Gallic bishops making the extensive claims about their own legal powers without this endorsement. Childebert I (r.511-588) appears to have been the first Merovingian ruler to adopt ecclesiastical legal ideology in his legislation.[748] The fragmentary *Childeberti Regis Praeceptum*, whose date and intended sphere of influence remain unclear,[749] emphasized that the law[750] was issued for the success and wellbeing of the entire '*populus Christianus*'[751] and that it was necessary to '*corrigere*' the people, since they had committed sacrilege.[752] Childebert's edict condemned landowners who allowed their tenants to set up pagan idols and did not either immediately destroy them, or even hindered priests who sought to take them down.[753] Secondly, it decried those who committed sacrilegious acts, such as revelling on holy days like Easter and the Nativity, '*unde Deus agnoscitur laedi*' and '*populos per peccatum declinet ad* mortem'.[754]

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[747] Wormald, *Making*, 38 onwards &esp.39-46 on the shifting style and substance of Merovingian legislation over the course of the sixth century; S. Wood, *Proprietary*, 293, Merovingian bishops shared with kings a 'mutually feeding moral authority and riches'.
[748] N.B. Wood: little evidence of 'Roman' influence (Wood, 'Gibichung', 19).
[749] Childeberti I. regis praeceptum (511 – 558), *Capitularia Regum Francorum*, MGH LL 2.1 ed. Boretius (Hannover, 1883), 2-3; Esders, *Rechtstradition*, 321, n.258: While the *Praeceptum* is only preserved in the Codex Corbeiensis, it was not necessarily intended for the Burgundian region alone.
[750] It was labelled '*epistula... Childeberti, data per ecclesias sacerdotum vel omni populo.*' and referred to itself as ', ...*hanc cartam generaliter per omnia loca decrevimus emittendam,...*'.
[751] '*...ad salutem populi pertenere, si populus christianus,...*'
[752] '*Et quia necesse est, ut plebs, quae sacerdotes praeceptum non ita ut oportit custodit, nostro etiam corrigatur imperio, hanc cartam generaliter per omnia loca decrevimus emittendam,...*'
[753] '*..., datis fideiussoribus non aliter discedant, nisi in nostris obtutebus praesententur.*'
[754] Ibid; cf. Pertz' edition, '*...unde Deus ledatur.*' (MGH, LL II., 1).

Childebert prescribed punishments for any who went against the admonition of the priests. He envisaged his '*fides'* assisting the priests. '*Serviles'* who contravened them were to be struck 100 times. The fragment ends before we learn what might have been done to '*ingenuus aut honoratior*'.[755] As Esders noted, the combination of the emperor's power with the *auctoritas* of the *sacerdotes* in order to root-out religious deviance had been characteristic of early fifth-century imperial legislation.[756] Furthermore, as Chapter Two highlighted, this agenda was transmitted into the post-imperial era in provincial conciliar legislation and refined as part of an emergent ideology of collective liability for sin and the imminent threat of *iudicium Dei*, in early sixth-century southern Gaul.

From the 530s onwards, Merovingian legislation showed signs of acknowledging the bishops as legislative partners. Esders also suggested the Edict of Childebert, might have been connected with the canon from Orleans 538.[757] The former prohibited Jews from frequenting public spaces during Easter, and its wording later seems to have influenced the *acta* of Macon 581/3.[758] Furthermore, Orleans 538, c. 34 ordered that the '*iudex civitatis vel loci'* who did not restrain ('*adstrinxerit*') heretics, was to excommunicated for a year. This possibly suggests Childebert and his officials had assumed the role of a punitive Roman emperor/praetorian prefect.[759] Furthermore, while the Edict of Chilperic (r.561-584) might only have mentioned nobles and *antrustiones* as co-legislators in its *arenga* (not bishops),[760] it went on to prescribe that the meeting time of the court should be added to those things announced in

[755] '*Quicumque post commonitionem sacerdotum vel nostro praecepto sacrilegia ista perpetrare praesumpserit, si serviles persona est, centum ictus flagellorum ut suscipiat iubemus; si vero ingenuus aut honoratior fortasse persona est...*'
[756] Sirmondian Constitution 13: Honorius and Theodosius II (407).
[757] Esders, *Rechtstradition*, 319, n. 246; *Childeberti I Regis Edictum* (MGH, LL II, 1, p.8-); Orleans 538, c. 33(MGH, concil. I, 83); cf. Pontal, *Synoden*, 78ff.
[758] Macon 581/3, c.13-17 (MGH, concil. I, 158f., n.4);
[759] ibid., 83; Esders, ibid.
[760] *Capitularia Regum Francorum*, MGH LL 2.1 ed. Boretius (Hannover, 1883), 8-10. See c. 9 things announced in churches; noted by F. Beyerle, 'Das legislativ Werk Chilperics I', in *ZRG*, *Germ. Abt.*, 78 (1961); followed by Heinzelmann, *Gregory of Tours*, 184f. In my opinion, Beyerle and Heinzelmann are too eager to extrapolate from this clause that the Chilperic desired to keep 'Church' and 'State' separate.

churches,[761] and adopted the broader 'Christian' or 'Imperial' attitude toward the role of the legislator, i.e. that he passes laws '*in Dei nomen*'.[762]

However, it was Guntram's edict, issued at the Council of Macon 585, and those of his successors Childebert II (ruler of Austrasia 575-95, and Burgundy from 592-95) and then Chlothar II, which most completely articulated the new, wide-ranging authority and function attributed to canons in the final decades of the sixth century. As we saw in the Introduction, Guntram's Edict elided the functions of canons and laws. Both were united in the task of punishing crime, and 'canonical severity' worked hand in hand with 'legal penalty'. According to Guntram, the rationale for the church council was nothing less than the preservation of justice. For their part, the bishops in council echoed Guntram's sentiments in the opening address of the council. After declarations of faith, the *acta* record that:

> *Metropolitani omnes dixerunt: Deo auxiliante commune deliberatione singula, quae necessaria sunt, a nobis definientur. Hoc universae vestrae fraternitate suademus, ut ea,* ***quae Spiritu sancto dictante per ora omnium nostrorum terminata fuerint****, per omnes ecclesias innotiscant, ut* ***unusquisque****, quid observare debeat, sine aliqua excusatione condiscat. Quoniam nos individua Trinitas, quemadmodum spiritu, corpore quoque in uno copulavit conventu, debemus sapienti consilio omnibus subvenire, ne forte taciturnitas nostra et nobis praeiudicium Divinitatis afferat et* ***subiectus*** *in temptatione inducat.*

[761] '*Illas et marias qui nuntiabantur ecclesias nuntientur consistentes ubi admallat*' Halfond translates as, 'those things that have been proclaimed in churches shall be proclaimed to those residing where the court convenes.'; cf. Fischer Drew, *Laws*, 152.
[762] Halfond, '*Sis Quoque*', argues against Heinzelmann's conclusion that Chilperic 'sought to limit the social role of churches' is convincing and the latter does not in any case undermine the broader convergence of episcopal and royal law-making. Cf. Heinzelmann, *Gregory*, 185f.

It is worth reiterating here that these statements were made to and endorsed by bishops from diverse regions of Gaul including Neustria, Aquitaine, Provence and Burgundy (only Austrasia was not represented – but it was in the legislation of Childebert II and Chlothar II below). The bipartite model of governance (i.e. king and bishops cooperating to legislate for 'their' subjects, to uphold justice, prevent crime and therefore fend off the wrath of God) was not dissimilar to some of the formulations found in late imperial legislation, particularly those endorsements of episcopal agency made by Honorius II and Valentinian III as the Western Empire fragmented in the first half of the fifth century.

The *Decretio Childeberti*, a collection of edicts issued by Childebert II between 594 and 596 (the years in which he ruled the combined Austrasian and Burgundian kingdoms) at three councils in Austrasia, did not contain an articulate formulation of the central role played by canons and the episcopate in the administration of justice, but they did implicitly acknowledge one by imposing harsh punishments for canonical offences, such as:

- perpetual excommunication and banishment from the royal palace for incestuous marriages (if the perpetrator rejected the correction of the bishop);[763]
- certain death (with no possibility of paying a *wergild*) for those who committed *raptus* and were captured, as 'enemies of God', attempting to claim asylum in a church;[764] and

[763] *Childeberti II Decretio*, MGH LL 2.1 ed. Boretius (Hannover, 1883), 15-18 at Andernach (March 594), c.2. Those who engaged in incestuous marriages '*...per praedicationem episcoporum iussimus emendare. Qui vero episcopo suo noluerit audire et excommunicatus fuerit, perenni condemnatione apud Deum sustineat et de palatio nostro sit omnino extraneus, et omnes res suas parentibus legitimis amittat qui noluit sacerdotis sui medicamenta sustinere*.

[764] Maastricht, c.4. (ibid., 16), '*...quicumque praesumpserit raptum facere, unde impiissimus vitius adcreverit, vitae periculum feriatur; et nullus de optimatibus nostris praesumat pro ipso precare, sed unusquisque admodum inimicum Dei persequatur. Qui vero edictum nostrum ausus fuerit contempnere, in cuiuslibet iudicis pago primitus admissum fuerit, ille iudex collectum solatium ipsum raptorem occidat, et iaceat forbatutus. Et si ad ecclesiam confugium fecerit, reddendus ab episcopo, absque ulla precatione exinde separentur. Certe si ipsa mulier raptori consenserit, ambo pariter in*

- monetary fines for failure to observe the Lord's day.[765]

The role outlined for the episcopate and its canons in Guntram's Edict was also acknowledged in the contents of Chlothar II's Edict, issued one week after the Council of Paris 614.[766] It pronounced:

Preface:

> *'Felicitatem regni nostri in hoc magisque divinum intercedente fuffragium succrescere non dubium est, si qua in regno, Deo propicio, nostro, bene acta, statuta atque decreta sunt, inviolabiliter nostro studuerimus tempore custodire; et quod contra rationis ordinem acta vel ordinata sunt, ne inantea, quod avertat divinitas, contingat, disposuimus Christo praesole per huius edicti nostri tenorem generaliter emendare.*
>
> *§1*
>
> '*Ideoque definitionis nostrae est, ut* ***canonum statuta in omnibus conserventur****, et quod per tempore ex hoc praetermissum est vel dehaec perpetualiter conservetur;...*'

The edict went on to confirm 'corner stones' of the expanded episcopal role as the upholders of justice and the moral order, which had just been re-articulated at the preceding council of Paris. Although, it must be acknowledged that the royal edict contained subtle differences to the conciliar legislation.[767] It addressed entry to the episcopate:

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*exilio transmittantur****. Et si foras ecclesia capti fuerint, ambo pariter occidantur, et facultates eorum parentibus legitimis, et quod fisco nostro debetur adquiratur.***'

[765] '*De die dominico similiter placuit observare,...*' 15 solidi for Salic Franks, 7.5 for Romans, 3 for *servi* (or *servi* could be beaten) (Cologne, c.14; ibid., 17).

[766] *Chlotharii II. Edictum*, MGH LL 2.1 ed. Boretius (Hannover, 1883), 20-24.

[767] Weckwerth, *Ablauf*, 149; Pontal, *Synoden*, 186; Barion, *Synodalrecht*, 235-46.

- Correct procedure in episcopal ordinations must be observed.[768] (I.e. the episcopal hierarchy retained the ability to regulate itself against royal / noble candidates).

Clerical *privilegium fori*:

- No judge may condemn a cleric (with the exception of criminal proceedings). Those convicted of capital crimes, are to be tried according to the canons and in the presence of bishops.[769]

The episcopate's expanded *patrocinium*:

- Suits between people whose fora are the 'public courts' and church dependants to be judged in a public hearing by church officials and the public judge together.[770]
- Persons freed by any free person must be defended by the bishops in accordance with the terms of their charters. Freedmen could not be judged or subjected to the jurisdiction of the public court except in the presence of a bishop or church official.[771]

Legislation regulating interaction with non-orthodox groups:

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[768] MGH LL 2.1, 21; cf. Paris 614, cs. 1&2 the canon mentioned only bishop and clergy electing a bishop, whereas Chlothar's Edict mentioned the King would confirm their selection.

[769] c.4 (ibid.), '*Ut nullum iudicum de qualebit ordine clerecus de civilibus causis, praeter criminale negucia, per se distringere aut damnare praesumat, nisi convicitur manefestus, excepto presbytero aut diacono. Qui convicti fuerint de crimine capitale, iuxta canones distringantur et cum ponteficibus examinentur.*'; see, Loening II, 526-32; cf. Paris 614, c.6(4) which had prevented a judge punishing a cleric under any circumstances, presumably also in criminal proceedings.

[770] *c.5 'Quod si causa inter personam publicam et hominibus ecclesiae steterit, pariter ab utraque partem praepositi ecclesiarum et iudex publicus in audientia publica positi eos debeant iudicare.*' (ibid.);

[771] c.7 (ibid., 22), '*Libertus cuiuscumque ingenuorum a sacerdotibus, iuxta textus cartarum ingenuetatis suae contenit, defensandus, nec absque praesentia episcopi aut praepositi aeclesiae esse iudicandus vel ad publicum revocandus*.' Cf. Paris 614, c.7(5) above did not require the *libertus* to hold a charter, episcopal protection was automatic.

- Jews could not exercise authority over Christians. Anyone who associated with Jews was to incur 'severest canonical penalty'.[772]

Defence of ecclesiastical property:

- All judges were to defend the property of the churches (because the poor could not defend themselves).[773]

The *Praeceptio Chlotharii* likewise afforded the episcopate and its canons a wide-ranging role in upholding justice.[774] Like the Edict of Guntram, its prologue identified the purpose of the legislation as the preservation of 'justice and righteousness', for which reason the 'rules of ancient law' were to be observed with 'due measure of law and equity'.[775] It also affirmed the cornerstone privileges of the post-imperial Church:

Rules affirming the Church's public authority and ability to uphold and enforce justice:

[772] c.10 (ibid.) '*Iudaei super christianus actionis publicas agere non debeant. Quicumque se... tuos... dine sociare praesumpserit, severissimam legem ex canonica incurrat sententia*.'; cf. Paris 614, c.17, baptism was necessary for Jews to exercise public authority.

[773] c. 14 '[...] *die ingredi ille qui ingredere voluerit ubi domus possedit, pontificum habeat usque audientiam defensare. Ecclesiarum res sacerdotum et pauperum qui se defensare non possunt, a iudicibus publecis usque audientiam per iustitiam defensentur, salva emunitate praecidentium domnorum, quod ecclesiae aut potentum vel cuicumque visi sunt indulsisse pro pace atque disciplina facienda*.'

[774] *Chlotharii II. Praeceptio*, MGH LL 2.1 ed. Boretius (Hannover, 1883), 18-20; The authorship of the *Praeceptio Chlotharii* was disputed (Sirmond originally attributed it to Clovis), but a consensus has emerged that it was authored by Chlothar II (584-629). Boretius, Beyerle, Classen and most recently Stefan Esders (with summary of previous literature) attribute it to Chlothar II. Esders argued on the basis of the MS evidence that the law was essentially a territorial code implemented for Burgundy after Chlothar came to power there in 614. (Esders, *Rechtstradition*, 7-31 and 88-109).

[775] '*Ideoque per hanc generalem auctoritatem praecipientes iubemus, ut in omnibus causis antiqui iuris norma servetur, et nulla sententia a quolebet iudicum vim firmitatis obteneat, quae modum leges adque aequitatis excedit.*' (MGH LL 2.1, 18).

- Any royal decision surreptitiously solicited contrary to law was to be invalid;[776]
- Any judges who condemned anyone contrary to law were to be censured by the bishops (in the absence of the king), so that the judge could correct his judgment.[777]
- Suits amongst Romans to be concluded according to Roman law;[778]

Protection of the Church's material privileges:

- Offerings of the dead left to churches were not to be taken away;[779]
- '*Agraria*, *pascuaria vel decimas porcorum*' were granted to churches '*pro fidei nostrae*', therefore no royal agents were permitted onto church lands;[780]
- Whatever was conferred to churches or clerics by aforesaid princes was to remain valid;[781]
- Whatever property the church, clerics or provincials could prove to have held for over 30 years in the absence of a dispute they, as possessor, were to retain.[782]

[776] c. 5. '*Si quis auctoritatem nostram subreptitie contra legem elicuerit fallendo principem, non valebit*.' (ibid., 19).
[777] c. 6. '*Si iudex alequem contra legem iniuste damnaverit, in nostri absentia ab episcopis castigetur, ut quod perpere iudicavit versatim melius discussione habeta emendare procuret*.'
[778] c. 4 '*Inter Romanos negutia causarum romanis legebus praecepemus terminari*.'; cf. *Liber Constitutionum* c.7 (below).
[779] c.10 '*Ut oblationis defunctorum ecclesiis depotate nullorum conpetitionebus auferantur, praesenti constitutione praestamus*.'
[780] c.11 the precise meaning of these items, esp. '*decimas porcorum*', is disputed. Esders interprets them as agricultural revenues.
[781] c.12 '*Quaecumque ecclesiae vel clericis aut quibuslibet personis a gloriosae memoriae praefatis principibus munificentiae largitate conlata sunt, omni firmitate perdurent.*'
[782] c.13 '*Quicquid ecclesia, clerici vel provincialis nostri, intercedente tamin iusto possessionis inicio; per triginta annos inconcusso iure possedisse probantur, in eorum dicione res possessa permaneat, nec actio tantis aevi spaciis sepulta ulterius contra legum ordine sub alequa repeticione consurgat, possessionem in possessoris iure sine dubio permanentem.*'

Additional affirmations of key legislative subjects of perennial interest to the episcopate:

- Protection for girls against abduction;[783]
- Prohibition on marriage to women of God;[784]

Between 585 and 614 legislation was generated in *every* Merovingian kingdom which addressed key subjects of post-imperial, ecclesiastical legislative agenda and affirmed both the episcopate and its canons as fundamentally important to the operation of justice and success of the realm(s). This coincided with radical changes in late-sixth century Gallic canon law embodied in the councils of Macon 581/3, Macon 585, Paris 614 and the *Collectio Vetus Gallica*.

4.C The application of canons

Praetextatus' trial

As we have seen, one characteristic of 'canon law' in Merovingian Gaul towards the end of the sixth century was that bishops asserted a 'maximalist' interpretation of *privilegium fori* in their legislation. Under the Roman Empire, clerics received the privilege to have their civil cases heard by a bishop, but at the same time, they had always sought judgment and legislation directly from the emperor. In late sixth-century Gaul, by contrast, even where kings suspected bishops of treason, they sought to depose bishops via episcopal councils operating according to canon law. This also contrasted with fifth- and sixth-century Arian kings, who often summarily exiled Nicene bishops. The political dynamics of the divided kingdoms operating under a shared dynastic and Catholic ideology, created a unique convergence of incentives for kings to be seen to operate according to a 'rule of canonical law', i.e. to interact with the

[783] c.7 '*Nullus per auctoritatem nostram matrimunium viduae vel puellae sine ipsarum voluntate praesumat expetire; neque per sugessiones subreptitias rapiantur iniuste*.'
[784] c. 8 '*Sanctimunialis nullus sibi in coniugium audeat sociare*.'

clergy and episcopate in accordance with the spirit (and sometimes even the letter) of canonical legislation.

Gregory of Tours' History of the Franks contains several examples of ecclesiastical dispute resolution, all from the final quarter of the sixth century, in which the specific texts of canons and episcopal conciliar decisions were regarded as authoritative per se. Perhaps the most striking example was the trial of Bishop Praetextatus of Rouen.[785] It is necessary to lay out Gregory's account in detail, since the elaborate manoeuvres which preceded the trial reveal just as much about the expectations surrounding canonical legislation as the basic facts of the dispute.

The background facts for the trial are as follows. Praetextatus, bishop of Rouen, was rumoured to have committed treason by bribing unspecified people to act against King Chilperic. Chilperic attempted to depose Praetextatus by having him condemned of three charges. Praetextatus was alleged to have,

1) stolen property belonging to Queen Brunhild (which she had left in the Praetextatus' possession); and
2) overseen an incestuous marriage between Chilperic's rebellious son, Merovech, and Sigibert's widow, Brunhild (†614). (He specifically accused the bishop of having acted against the canons of the church).[786]

[785] LH 5.18 (MGH Krusch/Levison, 216); See, Scholz, *Merowinger*, 135; Halfond, *Archaeology*, 92, 118f describes an abuse of process with only a 'semblance' of impartiality; Heinzelmann, *Gregory*, 45-47; Esders, *Rechtsdenken*, 116, (n.107) &p.124; Pontal, *Synoden*, 146f; J. George, 'Poet as politician, Venantius Fortunatus' panegyric to King Chilperic', *Journal of Medieval History* vol. 15 (1989), 5 – 18; Wallace-Hadrill, *Church*, 44: Chilperic pursued his vendetta against Praetextatus through 'formal channels'; Loening, II, 522.

[786] Chilperic to Praetextatus: '*An ignarus eras, quae pro hac causa canonum statuta sancsexissent?*' (Krusch/Levison, 217).

3) conspired with Merovech both to have Chilperic assassinated and to bribe the people to turn against their rightful king.[787]

On these charges, Praetextatus was temporarily deposed and a council of bishops assembled at St. Peter's Basilica in Paris (in 577). Praetextatus swore his innocence on all counts, but assorted witnesses testified to the contrary, presenting various precious objects, which they alleged Praetextatus had given them as bribes.

After the first exchange, Chilperic withdrew from the basilica, leaving the bishops to confer privately amongst themselves. At this point in the narrative, Gregory records an archdeacon, himself and the King all making arguments both for and against the validity of the proceedings, which deployed the same concepts and terminology found in royal-Merovingian and ecclesiastical legislation outlined in 4.B. Aetius, archdeacon of the church at Paris, attempted to persuade the episcopal council to acquit Praetextatus, stating that the bishops could either secure their reputations or else, by allowing their colleague to be destroyed, must abandon all claim to be God's bishops. Although Gregory was not explicit, Aetius appears to have been invoking the 'maximalist' episcopal *privilegium* fori, (potentially including criminal cases), which had been articulated at Macon 585.

Gregory's argument drew from the same model of combined episcopal/royal rulership later articulated in Guntram's Edict. By offering the King unholy advice, said Gregory, the bishops ran the very real risk of destroying the entire kingdom. He cited Ezekiel, ('If the watchman see the iniquity of man and the people be not warned, he shall be guilty for the soul that perisheth.')[788] and pointed to two historical examples of royal misrule which resulted in immediate divine retribution: that of Chlodomer, (who failed to heed the advice of Bishop Avitus, had Sigismund and his family murdered, and was duly defeated and killed whilst on campaign in Burgundy); and of the Emperor

[787] Gregory reports that, as the second charge was announced, the Franks waiting outside the church began shouting and threatening to break down the basilica doors in order to stone the bishop to death. This King Chilperic forbad.
[788] Ezekiel 33, 6; Krusch/Levison, 218.

Maximus, (who had forced Saint Martin to live in proximity to an impious bishop guilty of murder, was consequently driven from his throne and condemned to a cruel death).[789] Gregory's argument echoed the rationale in Guntram's edict issued roughly seven years before he wrote the History. He argued that violation of the *canones* would result in both '*inferni supplicia*' *and* loss of '*vitam praesentem'*.[790]

Gregory received no immediate response from his colleagues, two of whom instead reported the refusal to condemn Praetextatus back to Chilperic. Gregory was summoned before Chilperic, who complained in specific terms that he was failing to live up to his episcopal office. (Chilperic's reported terminology is significant. I have emphasised key terms):[791]

[Chilperic:]

"O episcope, iustitiam cunctis largire debes: et ecce! Ego iustitiam a te non accipio; sed, ut video, consentis iniquitati, et impletur in te proverbium illud, quod corvus oculum corvi non eruet."[792]

Gregory replied:

"Si quis de nobis, o rex, iustitiae tramitem transcendere voluerit, a te corrigi potest; si vero tu excesseris, quis te corripiet? Loquimur enim tibi; sed si volueris, audis; si autem nolueris, quis te condemnavit, nisi is qui se pronuntiavit esse iustitiam?"

Chilperic was incensed by Gregory's evasive response and threatened to go to Tours and stir up Gregory's *populus* against him by telling them:

"Ego qui rex sum iustitiam cum eodem [Gregory] *invenire non possum, et vos* [citizens of Tours] *qui minores estis invenietis?"*

[789] LH 3.6.
[790] LH Krusch/Levison, 219.
[791] Cf. English translation, Thorpe, 275-83.
[792] LH Krusch/Levison, 219.

Gregory replied that, even if the King did this, the people would know the truth. He retorted:

"Habes legem et canones; haec te diligenter rimari oportet, et tunc quae praeciperint si non observaberis, noveris, tibi Dei iudicium imminere."

He continued:

"Tu vero, qui alios de iustitia culpas, pollicire prius, quod legem et canones non omittas; et tunc credimus, quod iustitiam prosequaris."

Chilperic duly swore that he would observe the ordinances of the law and the canons.

This exchange is typically omitted from analyses of the Praetextatus trial, but it suggests that by the 590s, when Gregory wrote this account, and perhaps as early as 577, bishops and kings both manoeuvred around fixed conceptions of 'law' and episcopal office, the same concepts later promoted across Gaul in royal legislation, in order to pursue their conflicting aims.

Gregory presumably presented a stylised version of events, but the language and conceptual frameworks chime closely with that of Merovingian conciliar and royal legislation. Both accepted that *canones* and *lex* combined in equal measure to facilitate *iustitia*. Bishops had a duty to deliver justice to all parts of society, equally to the *minores* as to the king. Kings, conversely, had the power and the obligation to *corrigere*, once they had received advice from their bishops, but ultimately also owed a duty to abide by *canones*, rules which they were expected to possess like *leges*.[793] *Rex, episcopi, canones, lex* and *iustitia* together upheld *lex Dei*. Failure risked incurring divine retribution, an outcome understood as an immediate and literal possibility, with both recent historical and scriptural precedent.

[793] See Esders, *Römisches Recht* esp. 230-31ff. We see language of Childebert I and Guntram's edicts in action here.

That evening, Queen Fredegund's servants offered Gregory 200 pieces of silver to condemn Praetextatus. According to Gregory, the Queen had already secured undertakings from the other bishops that they would condemn their colleague. However, unanimous consent was required (a recurring feature in Gallic ecclesiastical-legal culture. Cf. the Saffaracus judgment above and resolution of the Nuns' Revolt, above).[794] Gregory promised to agree with the majority, provided their decision was in full agreement with the canons, a caveat Fredegund's messengers did not understand.[795]

At the second session the next day, Chilperic tried to have Praetextatus condemned for theft. The King submitted to the council that canonical authorities required a bishop who committed theft to be deposed.[796] He then tried to prove that Praetextatus' guilt on the basis that he had arrived at the council with two bundles of goods, which Chilperic alleged were stolen from him. However, Praetextatus was able to argue successfully that he had not stolen the items but been given custody of them by Queen Brunhild; that it was not a case of 'theft' but 'custody'.[797]

It is at this point that we reach the crux of the episode. Chilperic's original two charges (theft and facilitating an incestuous marriage) had apparently failed to unseat Praetextatus. (The alleged conspiracy to stir a revolt, appears to have formed context for the accusation of theft, rather than being examined on its own terms).[798] Consequently, on the second evening of the trial, Chilperic

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[794] Hannig, *Consensus*, 64 – 70, argues councils transferred 'consensus' into Frankish political culture.

[795] '..., *quod ea quae ceteri secundum canonum statuta consenserint sequar*.' (Krusch/Levison, 220).

[796] '*Convenientibus autem nobis in basilica sancti Petri, mane rex adfuit dixitque: "Episcopus enim in furtis depraehensus ab episcopali officio ut avellatur, canonum auctoritas sancxit."*' (ibid., 221).

[797] "*Tu autem quid nunc calumniaris et me furti argues, cum haec causa non ad furtum, sed custodiam debeat deputare?*" (ibid.).

[798] Gregory does not provide any further details about the allegation that Praetextatus had carried out the incestuous marriage between Merovech and Brunhild. One possibility is that Praetextatus had not carried out the marriage. Gregory's original report of the marriage (LH 5.2) does not mention Praetextatus' involvement, albeit that Merovech and Brunhild married whilst she was imprisoned in his episcopal see, Rouen. A second possibility is that the existing canons on incestuous unions (as far as we know) only prescribed punishment for the individuals entering the union and not for

sought to have the Bishop condemned by subterfuge. The King ordered 'his flatterers' to persuade Praetextatus that if he confessed to the charges (Gregory does not specify which precisely), the other bishops would intercede on his behalf and obtain a full pardon from the King. Following his colleagues' advice, Praetextatus confessed the next morning before council and King:

"Peccavi in caelo et coram te, o rex misericordissime; ego sum homicida nefandus; ego te interficere volui et filio tuo in solio tuo eregere."

Chilperic knelt before the assembled bishops and reiterated they had just heard Praetextatus confess to an detestable crime.[799] He then ordered Praetextatus out of the church and retired to his royal lodgings. While the bishops were conferring, Chilperic sent a *'...librum canonum, in quo erat quaternio novus adnixus, habens canones quasi apostolicus, continentes haec:*

"Episcopus in homicidio, adulterio et periurio depraehensus, a sacerdotio divellatur."'

(Which was a misquotation of an Apostolic Canon, c.25 in Dionysius Exiguus' second collection).[800]

According to Gregory's narrative, this citation proved decisive: Praetextatus was completely stunned.[801] Bishop Bertram (one of Chilperic's key 'flatterers') told Praetextatus he could not now receive sympathetic treatment from the council, unless he first received the King's pardon. Chilperic, however,

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clerics involved in creating the union (see above); there might therefore have been insufficient grounds to enforce a deposition. A third possibility is that Praetextatus had managed to defend himself by virtue of the fact that Chilperic himself forgave the union after Merovech and Brunhild sought sanctuary (according to Gregory's earlier account). N.b. also Gregory described the incestuous marriage as '...*contra fas legemque canonicam*...', (LH Krusch/Levison, 195).

[799] "...*reum crimen exsecrabile confitentem.*"' (ibid., 222).

[800] Dionysiana c. 25, *Ecclesiae occidentalis monumenta iuris antiquissima* ed. C. H. Turner I, 1 (Oxford, 1899), 18; '*Episcopus aut presbiter aut diaconus, qui in fornicatione aut periurio aut furto captus est, deponatur*'; Maaßen, *Geschichte* I, 421 (n. 2) & 439.

[801] '*His ita lectis, Praetextatus staret stupens*...'

demanded that Praetextatus' tunic should be rent or Psalm 108 recited over him, that he be excommunicated for ever and the verdict recorded in writing. Gregory objected, limply, that nothing should be done which was not in the canons. He was perhaps aware that the malediction of Psalm 108 and permanent excommunication were not sanctioned in the Apostolic Canons Chilperic had cited, but rather were a later innovation and, as far as we know, only prescribed as a punishment for despoilers of church property.[802]

Praetextatus was imprisoned. That evening he tried to escape and was beaten. Ultimately, he was exiled to an island off Coutances. He remained in exile until after the death of Chilperic († 584), when the citizens of Rouen recalled him to office. He requested King Guntram validate his return, but was opposed by Queen Fredegund, who argued that he had been deposed by the judgment of 45 bishops (cf. Sassaracus judgment above). Nevertheless, Bishop Ragnemod of Paris was able to persuade Guntram by stating that Praetextatus had only been sentenced to penance, not to deposition.[803] Ultimately, Praetextatus was murdered, in 586, whilst performing the Easter service by an anonymous assassin, although Gregory strongly suspected Queen Fredegund had ordered the action (See below).[804]

The trial of Praetextatus is striking for several reasons. Firstly, the proceedings were extensive and sophisticated. The trial itself was enormous. It lasted for three days and was attended by 45 bishops, making it one of the largest councils from the Merovingian era.[805] Secondly, all participants complied with identifiable procedures. The Franks clamouring outside the church were compelled to wait until the due processes of ecclesiastical discipline had been satisfied. While Chilperic directed the proceedings (he ordered Praetextatus in and out of the basilica, he called and adjourned the sessions), he also implicitly deferred to the authority of the bishops in council. He respected their right to

[802] The only extant canons to detail this mode of punishment was the aforementioned council of Tours 567, c. 24.
[803] LH 7.15.
[804] LH 8.31.
[805] cf. Ch.5.

reach a judgment independently, to the extent that he was not present at any of their post-hearing conferrals. He even knelt before the council and implored it to acknowledge Praetextatus' confession. As we have seen in Gregory's prelude to the trial-proper, both he and the king argued their points in terms of the duties owed by their respective offices. Chilperic, a king, thought *he* was owed justice by the bishops. This is notable given Gregory's usual tendency to portray Chilperic in a poor light.

Secondly, notwithstanding the fact that Gregory and/or Chilperic miscopied the relevant Apostolic Canon, each side repeatedly emphasised the contents of the canons as binding. Once Chilperic had managed to get Praetextatus to confess to murder and perjury and then produced a canon specifying these very acts were to be punished with deposition and exile, the trial was definitively over. No further attempts were made to clear Praetextatus. All Gregory could do was insist that the inevitable punishment did not exceed that prescribed by the canons. Whilst Gregory was himself sceptical of the canonical citation, he was suspicious because it was freshly copied, not because of its content, which was apparently accepted by the other members of the council.

The 'misquoted' Apostolic Canon from the *Dionysiana* is interesting in light of the initial charges put against Praetextatus. Chilperic had first attempted to frame Praetextatus for theft. However, according to Gregory's account, when Praetextatus gave his confession he condemned himself as a 'murderer' for his imaginary role in plotting against the King. The Apostolic Canon Chilperic misquoted actually, in its original form, condemned fornication, perjury and *theft,* rather than *murder* as Chilperic's excerpt had it. It is possible that Chilperic had planned his prosecution of Praetextatus with the Apostolic Canons in mind, but subsequently had his scribes hastily rewrite the relevant excerpt in order to fit Praetextatus' eventual confession. If this interpretation is correct, it could also indicate that Gregory's reports of the speeches at Paris are substantially accurate. Clearly, the contents of canons, particularly the older Greek canons received via Dionysius' collection from Rome, were still not entirely well-known in Gaul. (It is worth noting that Gregory was also highly

critical of Chilperic's efforts to introduce Greek characters into Gallo-Roman Latin.[806] Perhaps Gregory was suspicious of Chilperic's active engagement with Eastern culture and ecclesiastical law). Nevertheless, there was no debate over whether the canons should be enforced, as there had been at Contumelious' hearing in Marseilles some 40 years previously. Chilperic partially achieved his goal of having Praetextatus deposed, but he did so via canon law not royal fiat.

Episcopal institutional integrity

It is telling that a king, such as Chilperic, engaged with and manipulated 'canon law' in order to depose Praetextatus, particularly when he had two 'criminal' charges to put against him (theft and treason). It suggests that the 'maximalist' *privilegium fori* articulated later at Macon 585 was not merely 'aspirational'. This is not to say that episcopal *privilegium fori* was *always* respected, merely that the expectation that bishops ought to be judged by their peers and according to their own norms seems to have strengthened in comparison to the deposition of bishops in fifth-century successor kingdoms.[807]

Clearly, the authority of the episcopate and the integrity of canonical regulations were not always respected. There are plenty of examples of canonical rules being disregarded, asylum breached and bishops abused or even killed. Childebert's men, for example, violated church sanctuary pursuing Ursio Berthefried.[808] Guntram, who Gregory repeatedly portrayed as a model of piety, violated episcopal sanctuary to capture Guntram Boso.[809] When Chilperic put Gregory himself on trial for treason before a council of his peers, the Bishop opted to clear himself by 'un-canonical' means in order to ingratiate himself with the King.[810] What is notable about the end of the sixth century, however, is

[806] LH 4.44.
[807] LH 8.29 two clerics accused of attempting to murder Childebert on the orders of Fredegund were imprisoned, tortured and executed.
[808] LH 9.12 .
[809] LH 9.10; further examples, Esders, 'Rechtsdenken', 108; James, 'Beati'.
[810] The council permitted Gregory to clear himself of Fredegund's malicious rumours by swearing his innocence and saying mass at three different alters. Gregory grumbled: '*Et*

the way that bishops sometimes banded together to uphold their official privileges and canonical rules even in contexts involving extreme violence of social disorder.[811]

Likewise, there are signs of a robust episcopal institutional identity. Once Gregory cleared himself of treason by 'un-canonical' means, the council Chilperic had convened then declared that the king and Bertram, the bishop who had conducted the prosecution of Gregory on his behalf, should themselves be deprived of communion for levelling false charges against Gregory.[812] If Gregory's account is accurate, this demonstrates a remarkable degree of institutional integrity on the part of the council, which sat at Chilperic's royal villa in Berny. Chilperic managed to pass the blame onto his count, Leudast, to whom he attributed the (false) rumours of Gregory's treason. The council ended up excommunicating Leudast from all the churches in the land, a remarkable outcome considering Chilperic called the council.

A further example of the strength of this episcopal corporate identity came with the reaction to Praetextatus of Rouen's murder. Praetextatus was brutally assassinated whilst saying mass on Easter morning 586. Afterwards, the neighbouring bishops resorted to collective action in order to uphold the integrity of their episcopal privilege. Gregory's account attempted to capture the horror of such a public and irreligious slaying. He described how, having been fatally stabbed, Praetextatus continued to give thanks to God as his blood dripped from the cathedral altar. Queen Fredegund was widely suspected, but stymied a subsequent attempt to bring her to justice. She had the leading Frank of the city poisoned and his followers pursued from the vicinity after they threatened to investigate her crime and bring her to justice. In the face of such obstruction, Bishop of Leudovald of Bayeaux '*...epistolas per omnes sacerdotes*

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licet canonibus contraria, pro causa tamen regis impleta sunt.' (LH 5.49 Krusch/Levison, 261).

[811] E. James, 'beati pacifici', 28 notes 'solidarity' between bishops in Gregory's *Historiae*.

[812] Vannes 465, c.1 false witnesses to be excommunicated; Agde 506, c.32 (multiple), if a layman levels false accusations against a cleric he is to be excluded; ibid., c.37 murderers and false witnesses to be excluded from communion; Epaon 517, c.13 clerics who give false witness to be treated as capital offender.

direxit et accepto consilio aeclesias Rothomagensis clausit, ut in his populus solemnia divina non expectaret, donec indagatione communi repperiretur huius auctur sceleris."[813]

Despite being shadowed by Fredegund's assassins, Bishop Leudovald was able to investigate the murder. He was joined subsequently by a deputation of three bishops sent by King Guntram, who had heard of the atrocity. Guntram's deputation were apparently unable to prove Fredegund or her accomplices' guilt and returned to Burgundy. They succeeded only in blocking Fredegund's intended candidate for the bishopric, Melantius. Again, the key point is that collective episcopal action emerged as a useful mechanism for attempting to resolve the dispute and uphold a basic level of law and order in the face of a murderous queen regent. It was Leudovald's letter to his colleagues backed by the threat of action from a rival branch of the Merovingian dynasty which ensured Fredegund's atrocity was at least investigated, if not punished.

Even in cases of high-treason, bishops in council can be found objecting on points of procedure in order to uphold and defend canon law and episcopal office. For example, the Council of Macon 585, which significantly extended episcopal *privilegium fori* and at which Guntram affirmed the importance of observing canonical norms, was held in the aftermath of the pretender Gundovald's rebellion.[814] Guntram reportedly intended to use the council to exile bishops associated with the rebellion. [815] He had already humiliated bishops Bertram and Palladius for their association with Gundovald in front of their episcopal peers at a council at Orleans immediately after the rebellion, spurning their attempts to explain themselves and demanding bonds of security to ensure they attended the larger council scheduled for later in the year (i.e. that of Macon).[816]

In spite of this context, not only did the council extend key episcopal privileges, but many of the bishops implicated in the rebellion, and whom Gregory tells us were punished at Macon, also subscribed to the Council's *acta*.

[813] LH 8.31 Krusch/Levison, 399.
[814] For a brief summary of the rebellion, Halsall, *Migrations*, 6-7.
[815] LH 8.20 or this is what Gregory thought.
[816] Ibid.

Bertram of Bordeaux, was ranked fourth of the signatories, Palladius of Saintes, ranked fifteenth, Orestes of Bazas, ranked eighth. Even Ursicinus of Cahors, who was excommunicated for his unrepentant support for Gundovald, and Faustianus, Gundovald's own bishop, signed ranked thirty-seventh and sixty second respectively.[817]

That these bishops still subscribed to the *acta* and even maintained their position in the episcopal ranking suggests that while Guntram was happy to utilise Gallic councils to further his immediate political goals, episcopal institutions were secure enough for the signatures of treacherous bishops to carry enough weight to make it into subsequent collections of canon laws. (The only bishop to be killed in connection with the rebellion was Sagittarius of Gap, however it is not entirely clear this was a calculated killing, since he was cut down whilst in disguise trying to flee Gundovald's last stand.[818] Even if it was, Sagittarius was a bishop without the support of the wider Gallic episcopate, he had twice previously been prosecuted and found guilty by his colleagues. See below).[819]

The final trial documented in Gregory's *History*, that of Bishop Egidius of Reims for treason, was likewise carried out with some deference to episcopal privilege.[820] Its preliminary skirmishes were shaped by collective episcopal action. Furthermore, the trial turned on palaeographical examinations of key documents, indicative of a more professional or systematic approach to administering ecclesiastical law. Egidius had been implicated in a plot, orchestrated again by Queen Fredegund, to murder his Lord, Childebert II. Under torture, one of the would-be assassins claimed Egidius had colluded against the King. The bishop was removed from his diocese and imprisoned in Metz. Childebert requested an episcopal council to meet the following October in Verdun in order to hear the trial.[821]

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[817] Macon 585, *Subsciptiones* 172.
[818] LH 7.39.
[819] LH ed. Thorpe, 689 for key moments of his turbulent career and below, 5.C.
[820] LH 10.19 Krusch/Levison, 510-513.
[821] On the background to Egidius' trial and Gregory's implication in the plot, see Wood, 'Gibichung', 16-17.

The trial itself was an extensive and grave affair, with a former count appointed to prosecute the bishop and the king formally declaring him an '*inimicum eum...regionisque proditorem*'.[822] Despite the seriousness of the charges, Egidius' episcopal colleagues intervened and succeeded both in having him restored to his bishopric while the trial was being prepared and, it seems as a result of this initial complaint, in postponing the hearing so that it took place months later than originally planned (and at Metz rather than Verdun).[823]

Further references to bishops insisting upon their (canonically defined) legal privileges are preserved in the numerous biographical sketches which intersperse Gregory's narrative. Gregory recounted an anecdote about Bishop Theodore of Marseilles, which he had heard from Bishop Magneric of Trier.[824] Some years earlier Magneric had discovered that Theodore was being escorted north in secret to be tried for treason by King Childebert II. As the captive bishop Theodore was transported along the Moselle, Magneric rode out and remonstrated with the guards, demanding to know why they were treating Theodore in such a way and declaring it a grave impiety that he was prevented from seeing his colleague.[825] The guards allowed him to see Theodore, to give him some clothes and to comfort him.

Gregory also records that a bystander started to harass Magneric for his actions. Specifically, she complained that Magneric was interceding on behalf of Theodore, who was an enemy of the town and deserved exile. She added that he would be better to attend to the business of his own church and look after his own poor.[826] Gregory concluded the episode by commenting that the woman's sentiment was clearly demonic. The anecdote provided an exposition

[822] LH Krusch/Levison, 510.
[823] Ibid.
[824] LH 8.12 Krusch/Levison, 378
[825] '*...causatusque cum custodibus, cur tanta esset impietas, ut non liceret fratri fratrem aspicere, visoque tandem, osculatus eum, indulgens aliquid vestimenti, discessit.*' (ibid.)
[826] '*Mulier, quam spiritus erroris agitabat, clamare sacerdoti coepit ac dicere: 'O sceleste et inveterate dierum, qui pro inimico nostro Theodoro orationem fundis ad Dominum, ecce! Nos cotidie querimus, qualiter ab his Galliis extrudatur, qui nos cotidianis incendiis conflat, et tu pro eo rogare non desinis! Satius enim tibi erat, res aeclesiae tuae diligenter inquirere, ne pauperibus aliquid deperiret, quam pro hoc tam intente deposcere'.*

on Magneric's sanctity, but also upon the inherent tensions between the growing legal responsibilities of a post-imperial bishop. Bishops were supposed to act as patrons and protectors of 'their' *pauperes,* i.e. their *civitas*, but they also had a duty to uphold the privileges of their colleagues.

The Nuns' Revolt.

The Gallic episcopate actually used their 'transactional' and 'normative' canon-law instruments in order to resolve disputes. These documents appear to have emerged as useful tools for mediating the complex and overlapping relationships between members of the Merovingian dynasty, regional elites and the episcopate. Perhaps the best documented episode of such usage was the infamous nuns revolt involving sisters from St Radegund's Convent of the Holy Cross at Poitiers, which occurred in 589/90.[827] The events of the revolt and the means by which it was resolved provide: a) a further example of the strength of clerical *privilegium* fori, particularly when rival branches of the Merovingian dynasty were interested parties; and b) evidence of extensive and sophisticated use of conciliar canons both in the foundation of the nunnery and in the resolution of disputes connected to it.

The events of the revolt, as told by Gregory, are as follows: In 589 a group of nuns absconded from the nunnery.[828] They were led by Clotild (daughter of King Charibert) and Basina (daughter of King Chilperic), both of whom had entered the convent whilst it was still under the effective leadership of its royal founder, Radegund. The Princesses sought a royal audience in order to denounce their new abbess, Leubovera, (Radegund died in 587) who, they claimed, had broken the '*regula*' of the nunnery – the code of conduct

[827] Heinzelmann, *Gregory*, 72ff;

[828] LH 9.39 Krusch/Levison 460; Heinzelmann, *Gregory*, 72-87, at 73 notes the extraordinary amount of space Gregory affords to the dispute and his unusual inclusion of documents. Note, N. Bikeeva, '*Serente diabulo:* The Revolts of the Nuns at Poitiers and Tours in the Late Sixth Century', in R. Kotecki and J. Maciejewski (eds.) *Ecclesia et Violentia, Violence Against the Church in the Middle Ages* (Newcastle, 2014) pp. 72 – 91 at 88 provides a chronology of the events leading up to and including the revolt.

prescribed for members. Radegund had borrowed the rule authored earlier in the sixth century by Caesarius of Arles for his sister's nunnery. The Princesses alleged that Leubovera had invalidated her leadership of the foundation by keeping a transvestite, playing backgammon, hosting dinners and parties for the laity and giving away the nunnery's property to her relatives. They also wished to complain about the conditions which they had had to endure, specifically, that they were given poor food and clothing and, worse still, forced to share a bathroom with the other nuns.

Gregory's account of the dispute starts when Clotild and Basina stopped at Tours on their way to see King Guntram. Gregory tried to dissuade them from seeking a royal audience on the grounds that such an action contravened the Rule. He produced a copy of the letter, sent by seven Gallic bishops in reply to a request from Radegund, in which they had endorsed the foundation of the nunnery and confirmed its basic rules. (**'the Episcopal Foundation Letter'**).[829]

Confronted with this document, which explicitly prohibited nuns leaving the foundation, Clotild and Basina delayed at Tours to consider their options. Ultimately, they disregarded Gregory's advice and continued to seek a royal audience. They alleged to Gregory that their local bishop, Maroveus, had failed to address their concerns. A factor which they obviously felt validated their attempt to seek royal adjudication.

Guntram declined to settle the matter personally and instead sent a deputation of bishops to Poitiers to investigate their claims. In the meantime, a faction of the Princesses' supporters, including both nuns and armed retainers, had occupied the Church of St Hilary in Poitiers. Gregory reported that some of the nuns became pregnant during this occupation. Once Guntram's episcopal deputation had arrived and found the community of nuns in disarray, it promptly excommunicated Clotild and Basina, on the grounds that they had contravened the Rule by leaving the nunnery in search of royal justice. They even cited the Episcopal Foundation Letter, just as Gregory had predicted. [830]

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[829] Above, p. 192.

[830] LH 9.41, Thorpe, 532; Krusch/Levison, 467, '...*et hic cum reliquis iuxta epistulam superius nominatam eis excommonionem indiceret, ...*'.

The excommunication provoked a violent response from the nuns and their henchmen occupying St Hilary's, who proceeded to assault the bishops and their deacons. Her appeal to King Guntram having failed, Clotild also seized various nunnery estates. (Parties from both sides of the dispute were at this point accused of having misappropriated parts of the nunnery's endowment).

The deputation of bishops then sent a letter (no longer extant) to a larger council of bishops, which was sitting with Guntram. They explained their actions and received, in turn, a response ('**the Rescript**') from Guntram's episcopal council which confirmed the validity of their actions according to the canons. Again, as with the Episcopal Foundation Letter, Gregory included a verbatim copy of the reply, which he describes as '*Exemplar Rescripti'* in his account.[831] Its essential components were as follows:

1. *Introduction and summary of judgment*[832]

'*Litteras vestrae beatitudinis quantum, reserante nuntio, de vestra sospitate gavisi excepimus, tantum de iniuria, quam vos pertulisse signastis, non modico maerore adstringuemur, dum et regula transcenditur et nulla reverentia relegioni servatur*. '[833]

2. A brief outline of the Nuns' revolt.

3. Their Judgment:

'...Igitur quia optimae vos novimus ***statuta canonum*** *percurrisse ac regulae plenitudinem contenere, ut, qui in talibus excessibus videntur depraehendi,* ***non solum excommunicationem, verum etiam paenitentiae*** *satisfactionem debeant coerci, adeo*

[831] Krusch/Levison, 468.
[832] Addressed to Gundegisel, Nicasius and Safarius, 'worthy occupants of their apostolic sees', Bishops Aetherius, Syagrius, Aunachrius, Hesychius, Agricola, Urbicus, Felix, Veranus, the second Felix and Bertram.
[833] Krusch/Levison, 468.

reddentes cum venerationis cultu summae aviditatis dilectionis instinctum, indecamus, ea quae difinistis nos concordanter vestrae sententiae consentire, quoadusque in synodali concilio Kalendis Novembribus pariter positi debeamus consilio paretractare, qualiter talium temiretas frenum districtionis possit accipere, ut deinceps nulli libeat sub hunc lapsum, faciente iactantia, similia perpetrare.[834]

4. Their subscriptions.

Thus, the bishops of Guntram's kingdom sought to restore order in the nunnery on the basis that the nuns were transgressing an episcopal act, the Episcopal Foundation Letter, which they referred to as 'canonical statutes'. Gregory noted that Leubovera had also read out Radegund's Foundation Letter and forwarded it to 'the bishops' (presumably of Gaul). It is not entirely clear from Gregory's narrative at exactly what point the Leubovera read out Radegund's Foundation Letter. However, he also included Radegund's Foundation Letter verbatim just after the Rescript.[835]

Ultimately, the church council mentioned in the Rescript was convened at the cathedral in Poitiers.[836] It was attended by bishops from the realms of both Guntram and Childebert, including Gregory himself. The kings had resolved to end the revolt by '*sanctione canonica*'.[837] Gregory included a lengthy transcript of the episcopal council's judgment labelled '*exemplar iudicii*,' ('**the Judgment**'), which ultimately reinstated the Abbess and confirmed Clotild and Basina were to remain excommunicated until they had done sufficient penance. [838] The Judgment formed the entirety of Book 10 Section 16 with the following format:

[834] ibid.
[835] Above, p. 190.
[836] LH 9.42 Krusch/Levison, 470; Hannig, *Consensus*, 74, n.45 highlighted this process as an example of the influence of Roman legal custom in Merovingian Gaul.
[837] LH 10.15 Levison/Krusch, 503.
[838] LH 10.16; Krusch/Levison, 505-9. In LH 10.17.

Addressed to the Kings Guntram and Childebert II, the council acknowledged the divinely-granted sovereignty of the Kings and that both royal power and the Holy Ghost combined to give the Church its authority.[839]

- It then laid out Clotild and Basina's defence for having broken the Rule (and the terms of Radegund's Foundation Letter) by leaving the nunnery; i.e. that the Abbess' conduct had been lacking in reverence and Leubovera's (successful) defence of her own conduct.

(Certain allegations Leubovera refuted as factually incorrect whilst others, such as the accusation she played backgammon, she justified by pointing out that neither the '*regula*' nor the '*canones*' prohibited this specific activity, but conceding that, if the bishops wished to prohibit it in future, she would comply. In other words, she defended herself by means of a close and literal reading of the Regula and perhaps the Episcopal Foundation Letter).[840]

- The first round of allegations having been settled, the Judgment then recorded that Clotild and Basina were asked whether they wished to make further allegations of sexual misconduct, homicide, witchcraft or any other type of '*crimen capitale'*. This they declined to do, stating that their case rested on Leubovera's alleged violation of the *regula*.[841]

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[839] Krusch/Levison, 505, '*Dominis gloriosissimis regibus episcopi qui adfuerunt. Propitia Divinitate, piis atque catholicis populo datis principibus, quibus concessa est regio, rectissime suas causas patifecit religio, intelligens, sacrosancto participante Spiritu, eorum qui dominantur se sociari et constabiliri decreto*.'

[840] Ibid., 506, *'...nec in regular per scripturam prohibere nec in canonibus retulit*.'

[841] Ibid., 507 '*Interrogata Chrodieldis cum Basina, si forsitan aliquid abbatissa, quod absit, adulterii reputarent, sive quid homicidii vel maleficii fecerit aut crimen capitale, quod percuteretur, edicerent. Respondentes protulerunt, non habere se aliquid, nisi per haec quae dixerint eam ista fecisse contra regulam proclamarent.*'

- Their own complaints having been found baseless, the Judgment moved to consider the allegations of wrongdoing made against Clotild and Basina. In total 17 acts were listed, all of which the bishops substantiated.[842]

The Judgment concluded:

- With the facts established, the bishops concluded that, having consulted the canons, the Princesses must to be cut off from communion and assigned penance. Leubovera was to be restored as abbess. They declared again that they had acted in accordance with the royal command, 'church order' and after consultation of the canons.[843]

- The kings ought to restore all property to the nunnery in accordance with the 'deeds of gift of our royal masters'.[844]

- A prayer that once everything had been restored to its original state the rule of the fathers and the canons would be preserved.

The council had examined the *Regula*, '*canones*' (perhaps the Foundation Letter and/or general canonical regulations), the royal charters referred to in Radegund's Foundation Letter. It had conducted an investigation into violations of the Regula under its episcopal jurisdiction, whilst taking care to see if there were grounds to investigate more serious charges beyond the scope of their investigation. Some time later, when the unrest had subsided, Basina was reconciled with her Abbess while Clotild retired to a royal estate.

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[842] '*Tunc nobis percontantibus causam...*' (ibid., 507).

[843] '*...Reseratis a nobis et recensitis canonibus, visum est aequissimum, ut eas usque quod dignam agerent paenitentiam, a commonionem privari et abbatissa suo loco permansura restitui*. ***Haec nos pro vestra iussione, quod eclesiasticum pertenuit ordinem, circumspectis canonibus, absque personarum aliqua acceptione suggerimus peregisse***.' (ibid., 508).

[844] '*De cetero quod de rebus monasterii vel instrumentis cartarum domnorum regum parentum vestrorum de loco subreptum...*' (ibid., 508).

The dispute and the processes by which it was resolved exhibit several of the features which made late sixth-century episcopal conciliar *acta* and royal legislation distinctive. Firstly, as with the trial of Praetextatus, the 'canon-law' dispute resolution procedures appear to have been robust and a 'maximalist' version of *privilegium fori* adhered to. Guntram, Childebert and their representatives upheld an identifiable procedure and maintained the jurisdictional division between ecclesiastical and temporal justice, even though it resulted in a murderous revolt. The nuns revolted once Guntram had refused to hear their complaint and his bishops had ruled against them. That Guntram chose to defer the matter is not surprising given that his edict at Macon had specified that canonical severity should come before legal punishment and, in any case, the initial complaint was of a violation of a monastic rule sanctioned by the act of an episcopal decree.

The procedures of canonical dispute resolution (namely clerical *privilegium fori* and the expectation that councils of bishops would judge according to the canons), which were visible in the trials held under Childebert I and Chilperic I, were upheld even in the face of considerable violence. Gregory records that once the date of the general church council had been set, all other ad hoc attempts at reconciliation were ruled out. The local Bishop, Maroveus, was prevented from addressing the nuns occupying St Hilary's Church and offering them communion; so too was the priest, Theutar, sent by king Childebert to try to calm the revolt. Clotild and Basina's violent reaction to the handling of their complaints suggests they were not expecting such procedural resolution with legalistic application of church rules. This was a new and iniquitous phenomenon in their eyes.

The fact the nunnery lay in a contested area between the kingdoms and involved the three main competing branches of the Merovingian dynasty (Basina being a daughter of Chilperic I, Clotild of Charibert) might have encouraged Guntram and Childebert to adhere to established canonical procedures in order to maintain some semblance of even-handedness in what

was undeniably a relatively extraordinary situation.[845] Nevertheless, the combination of committal power with a formal episcopal hearing appears to have produced an institution which even bellicose princesses respected.

Finally, the process by which the nuns' grievances were settled was a bureaucratic one with formal judgments sought and issued, documents which Gregory had to hand as he was composing his history. At every stage, events turned upon the written acts of kings and church councils being actively enforced and legal documents cited in an attempt to shape the course of events. They include, (in the order in which they were originally drawn up):

1. 'Radegund's Foundation Letter', produced and cited by the deposed Abbess, Leubovera, who also forwarded it to all the bishops of Gaul.[846]
2. 'The Episcopal Foundation Letter', cited separately by both Gregory at Tours and Guntram's episcopal delegation to Poitiers led by Gundegisel.[847]
3. 'The Rescript', from the larger council of Bishops sitting at Guntram's court to their smaller delegation of three bishops, which confirmed the decision of excommunication.
4. 'The Poitiers Judgment'.[848]

Other documents mentioned but not transcribed include:

5. Royal documents mentioned in Radegund's Foundation Letter used to organise the endowment of her nunnery as she set it up.
    a. A deed by which Radegund divested all her own personal property and donated it to her new foundation;[849]

[845] Cf. Wood, *Kingdoms*, 184, who sees the dispute as too extraordinary to permit wider conclusions to be drawn.
[846] LH 9.42
[847] LH 9.41
[848] LH 10.16
[849] LH 9.42

   b. *'Epistulae'* from kings Charibert, Guntram, Chilperic and Sigibert accompanied by oaths and signatures which various parcels of property bestowed upon the nunnery;[850]
6. A precept ('*praeceptionem*') solicited from King Childebert by bishop Maroveus which stipulated that the bishop was permitted to rule in a regular fashion ('*regulariter liceat gubernare'*) Radegund's nunnery ('*monastyrium*') just as he did the other parish churches ('*reliquas parrochias*') in his diocese.[851] (He had obtained this after Radegund had first accepted the Rule of Caesarius and sought the protection of the Merovingian kings).
7. The deputation of bishops' preliminary verdict and report back to the larger council sitting with Guntram;
8. A 'written order' sent to Count Macco to put down the nun's revolt by force in order to facilitate the final council at Poitiers Cathedral.[852]

The affair throws yet more light onto the crystalizing authority of episcopal conciliar acts as normative legislation. The deputation in which Gregory participated explicitly sought to investigate whether the canons had been transgressed. They deferred to the larger church council to confirm whether their assessment of the matter was correct 'according to the canons'. Additionally, however, the Episcopal Foundation Letter and, more importantly, the way in which it was used to justify the condemnation of the nuns' revolt both suggest Gallic conciliar *acta* were coming to be regarded as binding legal instruments, authoritative in and of themselves – not simply as interpretations of church tradition. Conciliar *acta* had become flexible, all-purpose legal instruments.

Conclusions

[850] LH 9.42.
[851] Krusch/Levison, 465.
[852] LH 10.15.

In sixth-century Gaul, the function of canonical legislation continued to expand. Wide areas of lay activity came to be regulated by canons including economic or fiscal obligations (the tithe), the way in which lower social classes (*servi* and *coloni*) could interact with the administration of justice (ecclesiastical '*patrocinium'*). Participation in key elements of Christian ritual were made mandatory by canonical legislation. Canons were issued to govern non-orthodox, religious minorities (i.e. Jews). Similarly, the 'control mechanisms' (i.e. excommunication) prescribed by canonical rules continued to become more explicitly coercive and sophisticated. The episcopal legislative agenda appears also to have heavily influenced Merovingian legislation, which responded to its concerns and supplemented its prescriptions with weightier temporal sanctions. The form of canonical legislation and canon-law compilations changed to become more sophisticated and assertive of its own authority. Finally, by the closing decades of the sixth century, clergy, kings, ascetics and laity perceived in 'canon law' sufficient latent authority to structure policy, transactions and dispute settlement around it.

Whereas in the fifth century, provincial Gallic church councils had started tentatively to reaffirm and then to amend 'imperial-law' norms, by the turn of the seventh century bishops were comfortable explicitly amending imperial legislation. Furthermore, this legislative ability was endorsed and reinforced by Merovingian kings. Certain kings also appear to have accepted that there were some fundamental elements of the legal order in Gaul that were beyond their control. They legislated in order to mitigate church asylum. They also appear to have at least been aware that they *ought* to respect the content of specific canons, even if they did not always do so.

Canon law had become important enough as a genre of legislation that considerable resources were expended in producing, reforming and implementing it. Kings and queens sought formulaic 'judgments' issued by councils and referred to them years later. The idea that bishops had a duty to deliver justice seems to have penetrated into the highest and lowest sections of society. Likewise, canons had become potentially relevant to huge areas of

social, legal and economic life. They defined procedure and legal rights for freedmen (now one of the largest social classes). They set the terms upon which the laity could invest in 'religious property', which had become one of the largest 'asset classes' in post-imperial Gaul. They also governed religious foundations partially beyond the episcopal hierarchy, monasteries, xenodochia and oratories. Even kings sought assurances from the episcopal hierarchy in the form of canonical legislation and conciliar instruments, in order to clarify how their investments would be managed in the future.

Chapter Five: Explaining Change in Canonical Legislation, c. 537 – 614

The development in Gallic canon law which took place in the latter half of the sixth century and the turn of the seventh was caused in part by the same factors outlined in Chapter Two; namely, the fragmentation of the imperial system, the invigorating effect upon canon law of local successor kings and the transformative effect of ongoing Christianization. However, as the sixth century progressed, new factors came into play. This chapter will seek to explain why the changes identified in Chapter Four came about. Were they primarily developments in ideology, that is to say part of a 'radicalization of the clerical agenda' or a function of a new 'post-Roman' 'Frankish' elite identity? This chapter will argue that in order to explain why canon law continued to develop over the course of the sixth century it is not sufficient merely to highlight the desire of Merovingian kings to legitimise their rule by imitating imperial 'Catholic' emperors, nor can the change be explained purely through the growing stature of bishops as leaders of their communities. It will identify a further three 'conditions', which help explain this change; namely, the disunity of the Merovingian kingdoms, ongoing 'deep' economic and legal-cultural changes and continued separation of Gaul from emperor and pope.

5.A Royal power

The remarkable form and content of canon law in late sixth- and early seventh-century Gaul were underwritten by royal Merovingian power. Canonical rules were by definition a product of episcopal conciliar activity, and in sixth-century Gaul large-scale conciliar activity was driven by Merovingian kings. The increasingly sophisticated form of canonical legislation and compilations outlined in the previous chapter probably would not have occurred without a relatively persistent tradition of well-funded councils

attended by a large number of bishops. The evolution of late sixth-century legislation and collections like the *Vetus Gallica* were at a basic level encouraged by the high frequency of debates about church custom sustained through regular, large councils.

As we saw in Chapter Two, after a period of vacillation, Clovis converted to Catholicism and established a strong ideological bond with the Catholic episcopate. However, unlike the Visigothic and Burgundian successor states, there is little to no evidence that his regime engaged directly with the task of affirming imperial legislation. On the contrary, his first and only council, Orleans 511, which set the parameters of his relationship with Catholic church institutions, further opened the door to church councils taking greater agency in amending areas of imperial law which impacted clergy and churches. For the remainder of the sixth century, Clovis' successors for the most part sought to replicate his strategy of legitimation.[853] This included calling and chairing legislative church councils. Royal convocation of councils identified in Chapter Two continued throughout the sixth century.[854] Sometimes kings invited bishops directly; however, the metropolitan hierarchy also provided a mechanism by which to distribute invitations to councils and ensure attendance.[855]

[853] N.B. Chilperic uniquely seems not to have held any legislative councils. Pontal, *Synoden*, 161.

[854] Halfond, *Archaeology*, 57-60 counts 16 councils attributing some role to a *princeps* in their acts in Gaul 511 – 768. From our period Orleans 511, Orleans 533, Clermont 535, Orleans 549, Paris 551/2, Tours 567, Macon 581/3, Valence 583/5, Paris 614, Clichy 626/7; to which one can add Agde 506. While an additional 30 councils were convoked on royal authority according to non-legislative sources: Toul 550, Metz 550/5, Lyons 567/70, Paris 573, Paris 577, Chalon 579, Berny 580, Lyons 581, Troyes 585, Macon 585, Unknown 1 588, Unknown II 588, Unknown 1 589, Unknown II 589, Poitiers 589/90, Verdun/Metz 590, Chalon 602/4, Macon 626/7, Clichy 636, Orleans 639/41, Clichy 654. However, kings were not typically recorded as being present in the *acta* Weckwerth, *Ablauf*, 148-50; see also, Pontal, Synoden, 186; Barion *Synodalrecht*, 235-46.

[855] Barion, *Synodalrecht*, 52f. suggested kings only issued invitations to metropolitans, who invited their subordinates; Halfond, *Archeology*, 67 notes Mappinus of Reims mentioned receiving an invitation from Theudebald (*Epistolae. Austrasicae*. 11); also Weckwerth, *Synoden*, 128.

It remains an open question whether or to what extent royal backing was considered essential for the convocation of a large, inter-provincial council.[856] Regional councils without any sign of royal backing also met and produced legislation.[857] Most recent commentators have tended not to try and infer a formal 'constitutional' arrangement between bishops and kings and instead to observe that conciliar dynamics shifted according to the status and position of each king.[858] It should, however, be noted that in the late-seventh century, when royal Merovingian power became substantially weaker, large inter-provincial councils became much rarer.[859] This suggests that royal resources and political clout were necessary to facilitate the practicalities of inviting and hosting several dozen bishops plus their staff, some of whom travelled hundreds of miles to attend. In this sense the role of Merovingian kings was not dissimilar to that of Roman emperors in relation to ecumenical councils.

Crucially, the tumultuous succession politics of the Merovingian dynasty, which tended to subdivide kingdoms between heirs in each generation, meant that there were often numerous kings ruling Gaul simultaneously and that territory changed hands relatively frequently (See below). One consequence of this '*Teilreiche* dynamic' was a high frequency of church councils, as kings sought to consolidate their authority after gaining new territory.[860] The high volume of large 'unifying' legislative councils created a forum in which churchmen could coordinate to discuss and regulate issues which concerned

[856] Voigt, *Staat und Kirche*, 248 thought royal convocation was probably essential.
[857] Weckwerth *Synoden*, 128 points out Paris 556/73 was an interprovincial council with no sign of royal involvement. (MGH concil. I, 141-46).
[858] E.g. Halfond, *Archaeology*, 146 stresses variation according to strength of king.
[859] Ubl, *Inzestverbot*, 137 perceives a 'dramatic decline' in conciliar activity; Halfond, *Archaeology*, 202 points out Boniface was wrong to assert (in 742) that no church council had been held for the last 80 years (i.e. from c.660s) and attempts to downplay the difference in conciliar activity; Wallace-Hadrill, *Church*, 107 accepts Boniface's statement as correct in essence. There are certainly fewer attested councils Halfond, *Archaeology*, Appendix 1; Pontal, *Synoden*, 175 and 279.
[860] See 'unifying councils' below; N.B. Visigothic Spain, whose kings were Arian, held no legislative councils until Reccared converted to Catholicism. In Italy the Bishop of Rome and Senate were the key foci for Ostrogothic legitimation which mitigated the need to call so many councils. Although those which were called (often in relation to papal elections) did acclaim the Ostrogothic king.

them. Without these semi-regular, pan-Gallic councils it is almost impossible to imagine the coherence and content of legislation developing as it did in Gaul.

Most analyses have tended to approach Merovingian church councils by taking Orleans 511 as a definitive starting point in the tradition.[861] Clovis is often portrayed as having set in place an almost constitutional arrangement which defined conciliar activity for the sixth century (or Middle Ages, depending upon your viewpoint).[862] There is a large grain of truth in this, as we have seen. Orleans 511 did set certain parameters for the relationship between king and episcopate (and perhaps also between Frankish law and Gallo-Roman legal custom). However, this model leaves little room to explain change in the content and form in conciliar and royal legislation over the remaining decades of the sixth century. It is also fails to take into account the 'demand-led' nature of lawmaking, the substantive developments in legislation which occurred towards the end of the sixth century, or alternative models of leadership and legislation trialed in other successor kingdoms. Furthermore, after Orleans 511 there was a gap of two decades before the next known legislative council in Merovingian Gaul, which might suggest that Orleans 511 was more of a political experiment intended to consolidate the process of conquest in Aquitaine. It is possible Clovis was simply responding the ideological challenge of Alaric II's innovative council of Agde, which had raised the bar of post-imperial kingship, rather than establishing a new model for government.

In light of the shifting content and form of Gallic conciliar legislation over the course of the sixth century, it is highly interesting that the frequency and scale of Merovingian conciliar activity seems to have increased substantially as the century progressed. More specifically, there appears to have been a 'spike' of conciliar activity in the 570s and 580s.[863]

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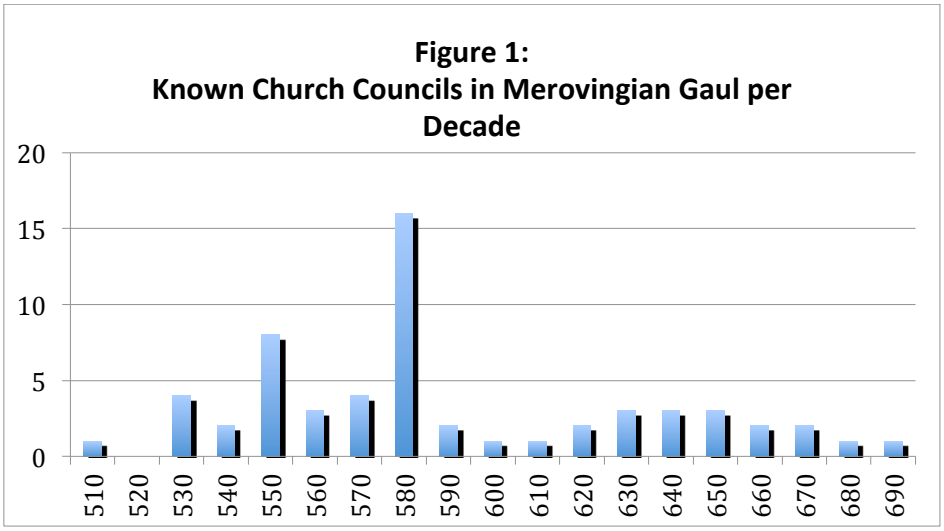
[861] Studies starting with Orleans 511 include Halfond, *Archaeology*; Pontal, *Synoden*; Loening G*eschichte* divides his study at 511; the two most influential editions of Merovingian canon law also observe the divide Maaßen, MGH concil. I; De Clercq, CCSL 148.

[862] Above, p. 20, n. 44; e.g. Brunner, *Rechtsgeschichte*, II, 273 Clovis turned the bishops into instruments.

[863] Wallace-Hadrill, *Church*, 97 perceives the 540s councils of Orleans as the start of intensive conciliar activity in Gaul.

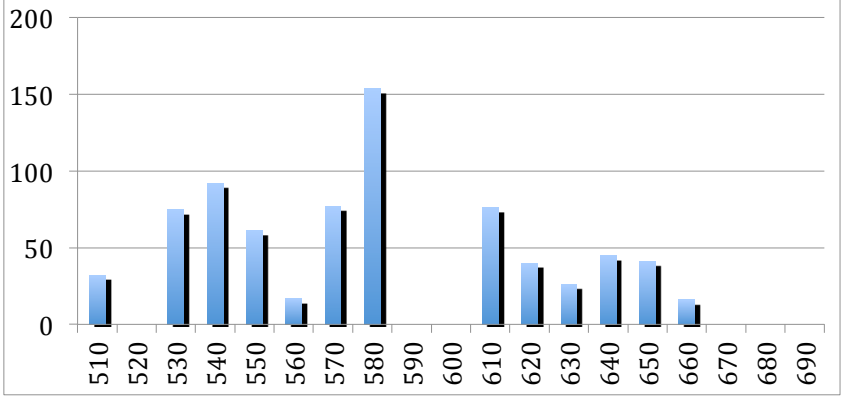


See Appendix 1: Known Councils. N.B. I have excluded Childebert II's legislative councils (Andernach, Maastricht and Cologne 594-96), since they produced no canons. However, they might reasonably be included since they clearly addressed a canonical legislative agenda.

It must be acknowledged that a statistically significant minority of known councils are attested in Gregory of Tours' *History*, which was written in the 590s and focused upon the latter sixth century.[864] (Despite supposedly running from the start of time, i.e. Genesis, to his present day, six of Gregory's ten books narrated contemporary events, i.e. 538-594).[865] However, an alternative measure of conciliar activity free from the 'Gregory effect', is to track the number of subscribing attendees to Gallic councils. This measure has the benefit of factoring-in the scale of the council (although admittedly not the lay attendees). Even by this measure, the 580s again emerge as a period of intense conciliar activity. As we can see in Figure 2 we have the names of over 154 subscribers who attended councils in the 580s, 67% more signatories than the next most active decade, the 540s, (92 subscribers) which contained the intra-regional councils of Orleans.[866]

[864] APPENDIX 1.
[865] Also A. C. Murray, 'The position of the *grafio* in the constitutional history of Merovingian Gaul', *Speculum* 64 (1986), 787-805 at 790 notes Gregory wrote very little about the north.
[866] Orleans 541 (53 subscribers) and Orleans 549 (71 subscribers).

Figure 2:
Extant Conciliar Subscriptions per Decade



The spike in councils leading up to Macon 585 provides important context for the reformulation of canon law at the 'radical' councils of Macon 581/3 & 585, the *Collectio Vetus Gallica* and the endorsement of canon law in royal legislation c.585 – 614. As Chapter One sought to highlight, under the functioning Empire canons were used more intensively at large-councils and in intra-regional disputes than by isolated provincial bishops. It is therefore perhaps unsurprising that a period of intense, pan-Gallic conciliar activity might correspond with a qualitative shift in the canons themselves.[867]

In light of the 'emergence' of formulaic conciliar 'judgments', such as that of Saffaracus (Paris 551) or the Nuns' Revolt (589), it is also worth noting that there appears to have been an increase in councils with a 'judicial' function from the mid-point of the century onwards.[868] We saw in chapter three how under Caesarius the Provencal episcopate had pioneered a 'systematic' approach to applying canons in matters of clerical discipline, in which he articulated novel arguments about the need for strict enforcement of the rules.[869] From the 550s onwards, 'judicial' councils proliferated. Roughly fifteen councils with a dispute-resolution component to them are attested, the

[867] Cf. North African councils and canons in chapter one.
[868] For overviews see, Weckwerth, *Ablauf*, 160-63; Pontal *Synoden*, 136 (although she omits discussion of pre-567 'tribunals'); Halfond, *Archaeology*, 223-45 (a.511 onwards).
[869] Above, councils of Carpentras 527, Arles 524, Marseilles 533.

majority (but not all) convened under the leadership of Merovingian kings.[870] All but Halfond's 'Unknown 1, 589', which was arranged to investigate Brunhild, dealt with disputes involving clerics, usually bishops. Even taking in to account Gregory's *History*, this seems like quite an increase in conciliar dispute resolution. The fifth and early sixth centuries are well enough represented in terms of conciliar and non-legislative sources that it seems unlikely such a disparity could be attributed, purely, to an imbalance in the source material.[871] Again, this chronological pattern corroborates the emergence of documents resembling conciliar judgments in Chapter Four and the relatively unprecedented extent to which they were cited in the course of disputes, such as the Nuns Revolt. It is at least possible that conciliar dispute resolution of the type seen at the nunnery of the Holy Cross became more popular towards the end of the century and/or that these judicial councils were symptomatic of a widely-acknowledged 'strong' clerical legal privilege.

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[870] Councils with 'judicial' or dispute resolution components:
Paris 552 (as above);
Paris 577 (LH 5.18) Praetextatus under Chilperic;
Two synods (at Poitiers) 598/90 (LH 9.41) in response to the revolt at Radegund's (above);
Metz 590 (LH 10.19) trial of Egidius under Childebert II
Pontal also notes:
Chalon-sur-Saone 579 (LH 5.36; Marius of Avenches *Chronica*, a.579) trial of Salonius of Embrun and Sagittarius of Gap (see below).
Lyon 581 (LH 6.1), 588 and 589;
Paris 580
Sorcy 589 (LH 9.37) reinstated Droctigisel of Soissons.
Halfond also notes:
Saints 579 (LH 5.36) to settle a dispute between Count Nantinus and Bishop Heraclius both of Angloueme;
Berny, (Chilperic's royal villa) 580 (LH 5.49; Venantius, *Carmina* 9.1) trial of Gregory of Tours.
Auvergne 584/91 (LH 6.38-39) mediated between bishops Urscinus of Cahors and Innocentius of Rodez.
Macon 585 (LH 7.31, 8.7&12&20) excommunicated Ursicinus of Cahors and fight settled between followers of Priscus of Lyons and Duke Leudegisel;
'Unknown 1' 589 (LH 9.32) convoked by Guntram to deal with accusations against Brunhild, but she swore her innocence and it was cancelled.
Paris 602/4 (Fredegar, 4.24; Vita Desiderii ch.4, MG SRM III), deposed Desiderius of Vienne.

[871] For example, Caesarius' trial of Contumeliosus in 533 was recorded in two different bodies of sources

5.B *Teilreiche* dynamics

The specific mechanics of Merovingian dynastic politics in conjunction with the absence of serious regional rivals created conditions in which kings had an incentive to promote the integrity of canons and in which the episcopal church could periodically exercise enough leverage to assert its institutional independence. The 'mechanics' in question stemmed from the alternating periods of unification and division experienced in Gaul, as each generation of Merovingian rulers cannibalised and then re-divided their rivals' kingdoms.[872] In each period of unification a pan-Gallic church council was held. This provided the collective Gallic episcopate with a chance to standardise its canonical regulations, sense of corporate identity and liturgical practices, and prevented the different regions of Gaul diverging from one another, as they did from the Visigothic or East Roman churches.[873]

The 'unifying councils' were:

- 511 under Clovis;
- A sequence of councils at Orleans in the 540s under the alliance between Childebert I and Chlothar I;[874]
- Macon 585 (although excluding the bishops of Austrasia, Childebert II's 'allied' realm);[875]

[872] Key divisions in **511**, when Clovis realm was divided between Theuderich (Reims), Chlodomer (Orleans), Childebert (Paris) and Chlothar (Soissons); Chlothar reunited Francia by seizing his brothers' territories as they dead. Chlothar I died in **561** leaving territory to Charibert (Paris), Guntram (Orleans), Sigibert (Reims) and Chilperic (Soissons); in **567** after the death of Charibert his realm was divided between Guntram, Sigibert and Chilperic. For political narratives, Scholz, *Merowinger*, 83-88, 122-24, 129-133; also, Halfond, 'Sis Quoque', 54f.; N.B. Esders 'Avenger', 33 revised the date of Charibert's death and division of his kingdom from 567 to 568 on basis that he is mentioned as a ruler in November 567 council of Tours).

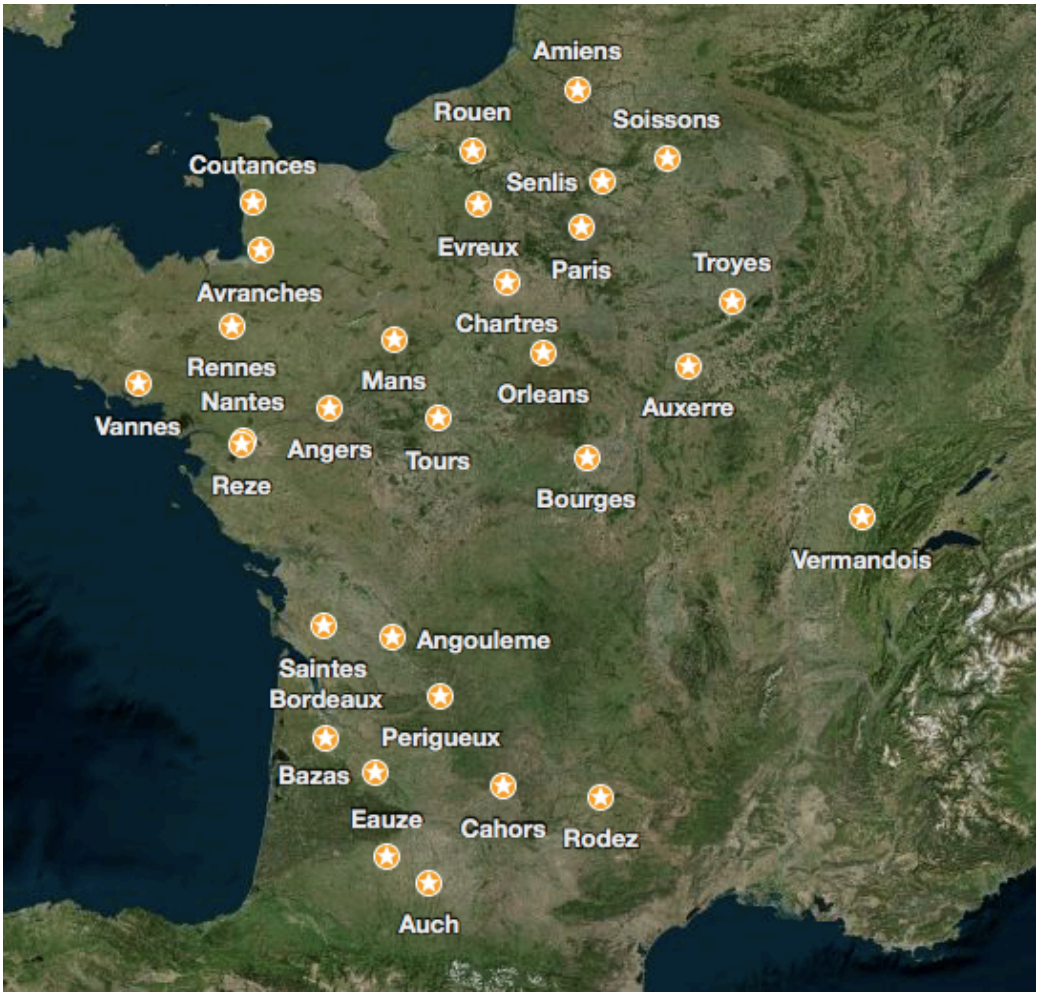
[873] N.B. Ullmann, 'Welfare', 3 noted the 'corporate' identity of the sixth-century Gallic episcopate (in contrast to the monarchical model in Italy), however, he suggested it might be a 'remnant of the Germanic past'.

[874] Champagne and Szramkiewicz, saw Orleans 549 as the 'first' reunification, Macon 585 the second and Paris 614 as the third (p.8-10). However, there is some room for debate. Scholz, *Die Merowinger*, 106 counts Orleans 533 as a 'reunification'.

- 614 under Chlothar II.[876]

[875] Pontal, *Merowinger*, 186-91.
[876] *Vita Agilii* (Abbatis Resbacensis. *Acta Sanctorum,* online, Aug. VI, 574–84), 3.12 refers to the council being held after Chlothar II's reunification of the kingdoms.

Orleans 511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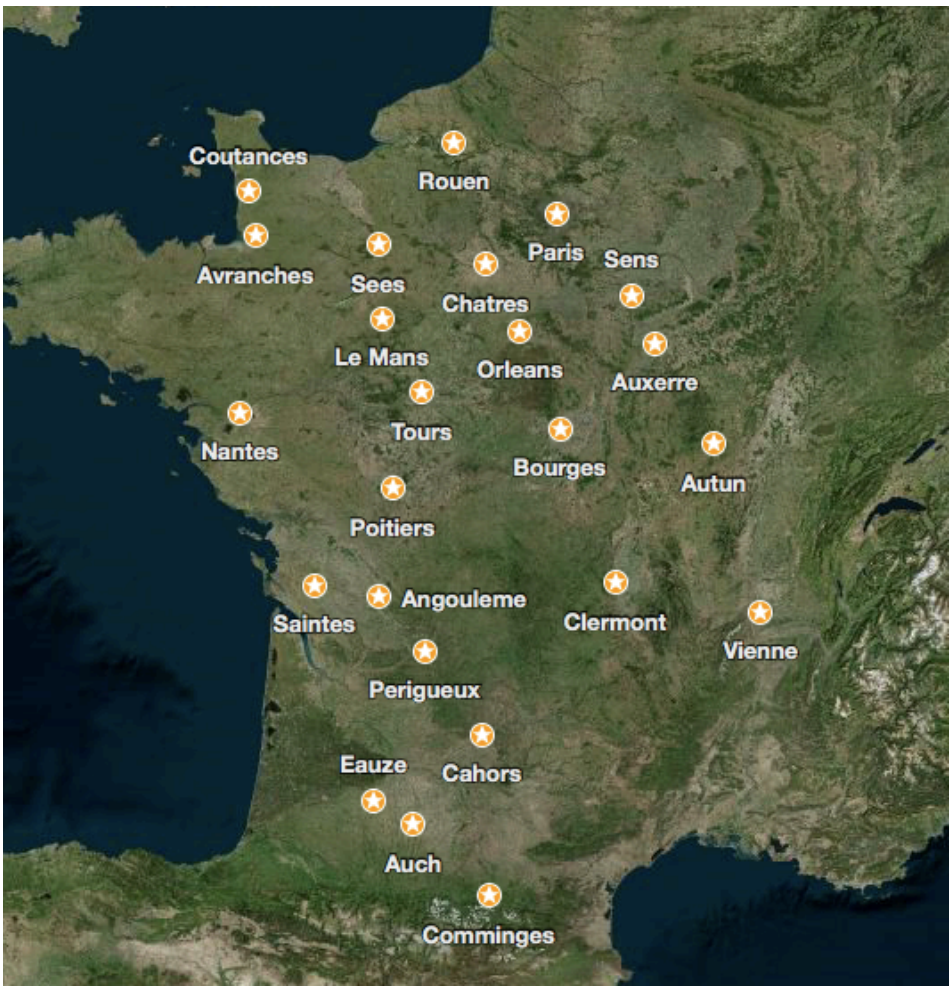
Orleans 533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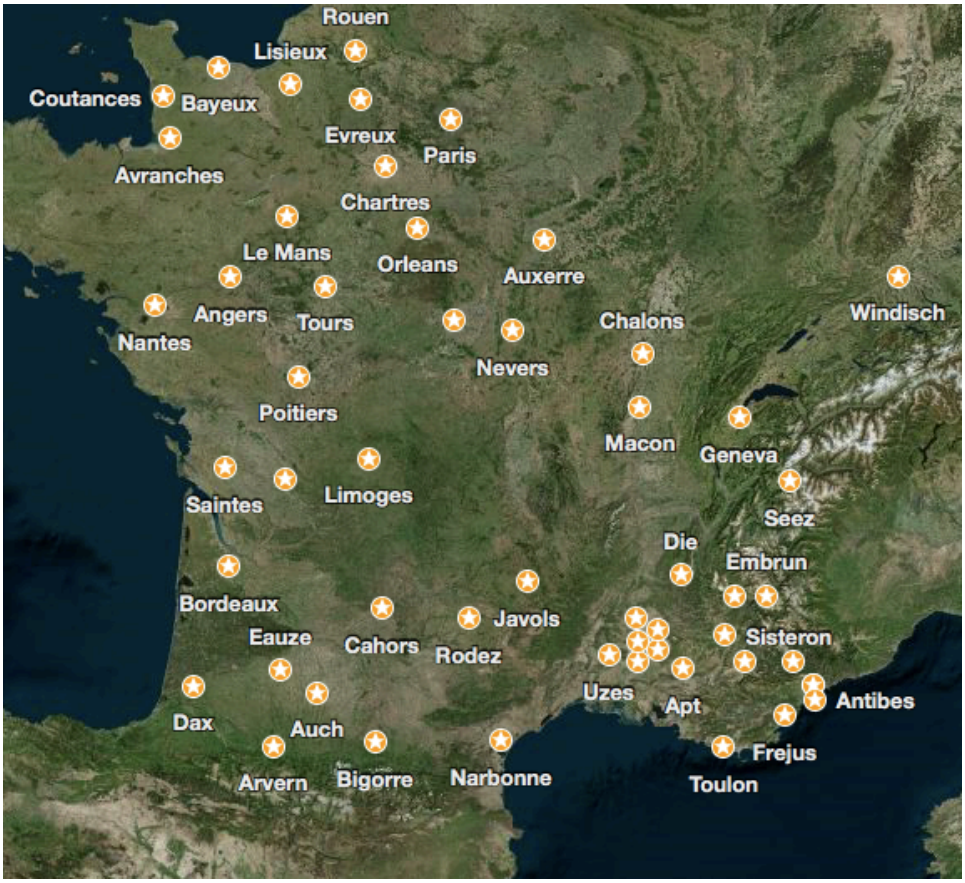
Orleans 541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Frejus
Arvern
Bigorre
Narbonne
Toulon

Orleans 549


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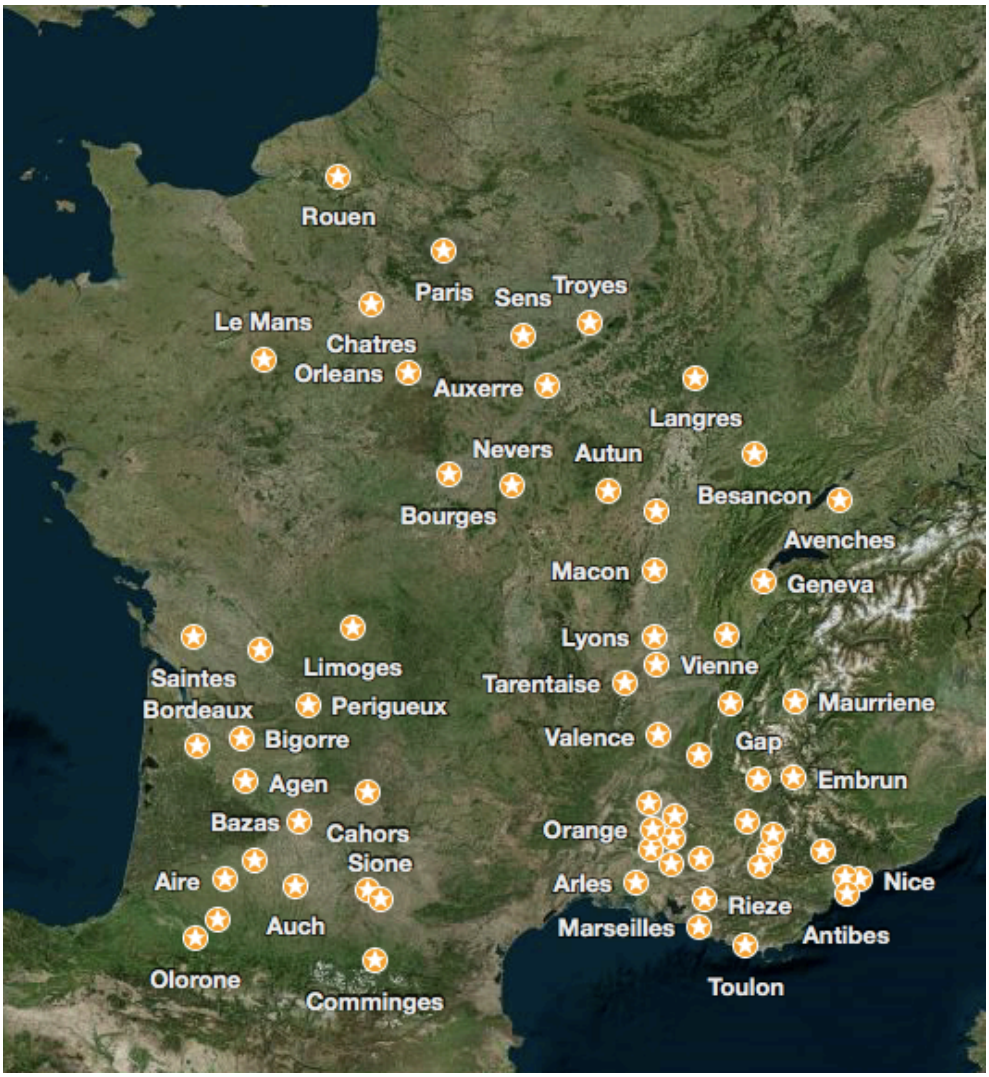
Macon 585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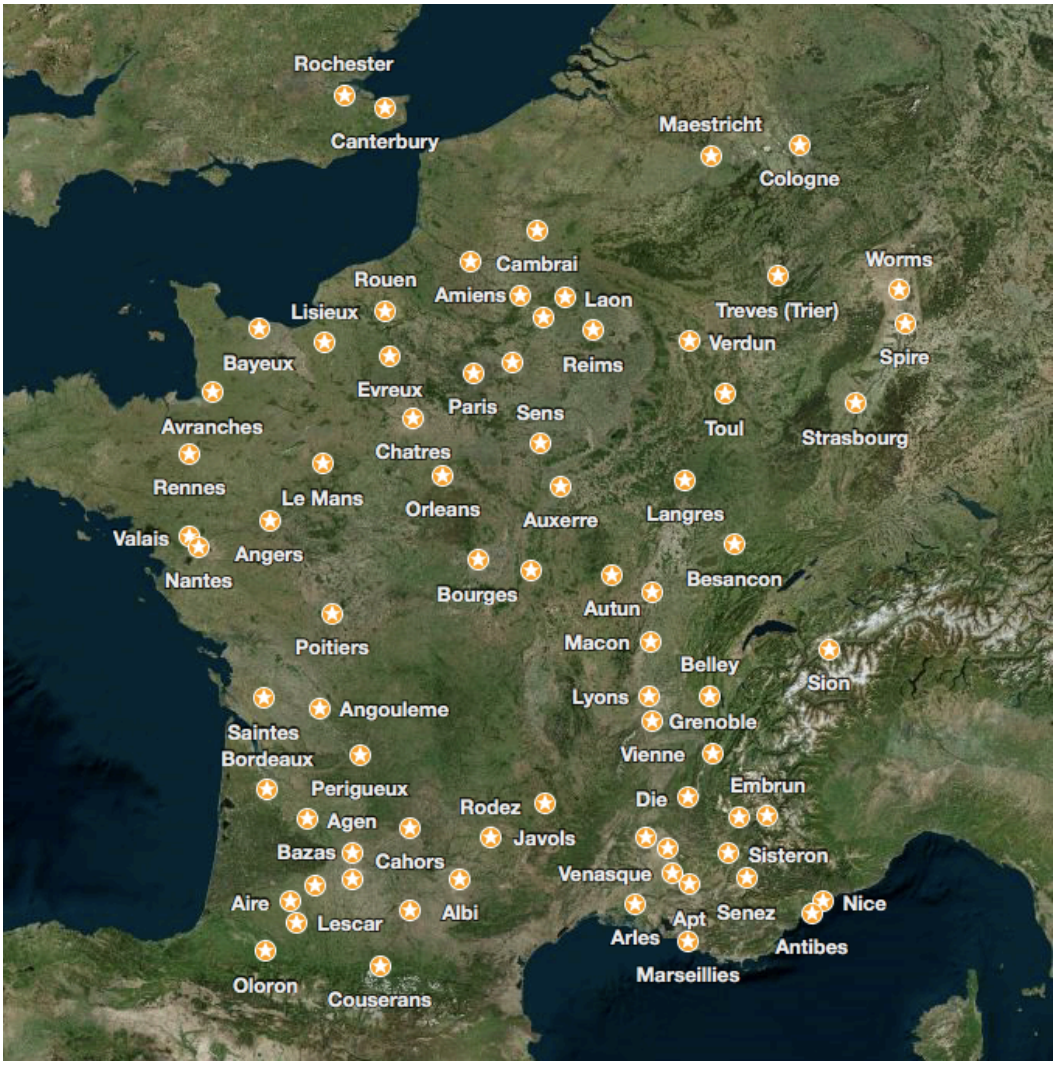
Paris 614



It was the opposing periods of 'disunity', however, which created unique conditions for the development of Gallic 'canon law'. Since the norm in Gaul was for multiple 'Catholic' kings to coexist simultaneously, no single ruler could influence the ecclesiastical legislative agenda too heavily. Individual kings (and particularly those like Chlothar I, Guntram and Chlothar II, who either united all the kingdoms or, in Guntram's case, enjoyed a brief period of pre-eminence)[877] might facilitate one or two major councils and perhaps amend minor points of

[877] Chlothar I was king of all Francia 558-561. Guntram ruled Burgundy and Paris with Childebert II of Austrasia as a subordinate ally 585-592. (Childebert depended upon Guntram after the failed rebellion of Gundovald in 585. They signed the Treaty of Andelot in 587). Chlothar II ruled all Francia 613-639.

law via an edict, but such influence was fleeting. Consequently, kings by-and-large had to work around canon law as it existed. This contrasted sharply with the ability of Roman emperors to influence ecclesiastical legislation, either by issuing their own laws on the church or by influencing the output of episcopal councils by presiding over sessions, setting the agenda and enforcing pre-decided outcomes.

Periods with multiple kings operating in competition with one another, yet under a shared Catholic ideological framework, provided an incentive for individual rulers to insist upon everyone upholding the integrity of church tradition. This dynamic created conditions within which it made sense for a king, such as Chilperic, to pay close attention to the specific wording of individual canonical prescriptions, as in the Praetextatus trial. Orleans 533, convoked jointly between Childebert I, Chlothar I and Theuderic I, was the first Frankish council to articulate the aim of upholding '*legis Catholicae*'. (Clovis' Orleans 511 made no mention of it, despite his efforts to appeal to the institutional responsibilities of the *ecclesia*).[878]

Preserving *Lex Catholicae* (including *canones*) became a kind of shorthand for conducting intra-kingdom policy with integrity. Just as royal-episcopal relations in the Visigothic and Burgundian kingdoms were shaped by the threat of intervention from rival kingdoms, there was also an ever-present threat for Merovingian rulers that, should they fail to respect the episcopate and its norms, a rival branch of the dynasty would use this as a pretext to intervene against them. Even where *canones* themselves were not invoked, kings often justified acts of war with reference to *iudicium Dei*, a concept which we saw Caesarius developing into a 'judicial' rationale for enforcing canonical regulations and which featured heavily at Macon 585. In an extreme example, Guntram threatened to lay waste to the Neustrian Kingdom after Fredegund's governors refused to allow three bishops to investigate the murder of

[878] Noted by Scholz, *Merowinger*, 107; MGH, concil. I, 62; N.B the preface also ended *'...ex veterum canonum auctoritate conscripsimus.'*

Praetextatus.[879] Guntram also supposedly justified refusing to give Paris up to Childebert, by reading from the text of a treaty signed with Childebert's father Sigibert. The treaty was written in the name of Polyeuchtes the Martyr and saints Hilary and Martin and specified that if either Guntram, Sigibert or Charibert entered Pars without the consent of the other brothers, he would lose his share of the city. Guntram argued to Childebert's envoys, that Sigibert had entered Paris, died '*iudicio Dei*' and thereby forfeited his share of the city. Chilperic, had forfeited his share in the same way. He went on:

> '*Ideoque,* ***quia illi iuxta Dei iudicium et maledictionibus pactionum defecerunt****, omnem regnum Chariberti cum thesauris eius meis ditionibus, lege opitulante, subiciam nec exinde alicui quicquam nisi spontanea voluntate indulgeam*.'[880]

While the treaty Guntram referred to is lost, Guntram and Childebert's subsequent treaty of Andelot was included verbatim in Gregory's History. In it Guntram and Childebert agreed (amongst other things) on the division of Gallic cities between them, that Childebert would inherit Guntram's kingdom and that both would respect the property of churches. In the final clause the kings agreed, '*tremendum diem iudicii*'.[881] These instances suggest that Merovingian kings structured their foreign policies around documents invoking *iudicium Dei*, just as they structured their religious investments.

This is not to say that careful attention was necessarily paid to the wording of canonical regulations in late sixth-century Gaul. In his own trial for treason, Gregory of Tours consented to clear himself by 'un-canonical' means in

[879] LH 8.31 Guntram used the murder or Praetextatus to intervene in Fredegund's Neustrian kingdom; N.B. this argument runs counter to the more common view that repeated division of Gaul helped to undermine the provincial system in Gaul Ewig, *Merowinger*, 105; Harries, 'Notitia', 28.
[880] LH 6.7 (Krusch/Levison, 329); Esders, 'Avenger', 22.
[881] LH 9.20 Levison/Krusch, 439; Hannig, *Consensus*, 64 suggests the treaty followed a Roman-law contract; cf. E. Meyer, *Legitimacy and Law in the Roman World, Tabulae in Roman Belief and Practice* (Cambridge, 2004), 96ff.

order to placate Chilperic.[882] Neither were church norms more broadly always respected.[883] Rather, the '*Teilreiche* dynamic' created a context within which clerical and lay elites were faced with numerous incentives to accept canons as a fundamental normative system; i.e. to raise 'canons' as one of the genres of norm capable of shaping general expectations about how law and society ought to work.

On the other hand, since councils were a means for kings to assert and maintain their political authority, canons on conciliar protocol became fodder for intra-kingdom diplomacy. Gregory of Tours, whilst acting as Childebert II's ambassador, rejected Guntram's request that all bishops in Austrasia attend a council in his kingdom in 588, saying Childebert '...acted according to 'canonical use', that only metropolitans called councils and that Guntram's was not warranted.[884]

Guntram's regime was clearly innovative in its exploitation of church tradition and canon law as instruments of royal power. Guntram himself seems to have been sincerely concerned about violating church norms and incurring spiritual liability. After his disastrous campaign against the Visigoths (585), in which his poorly-led coalition ended up sacking churches along the Rhone Valley (his own territory) before suffering plague and a resounding military defeat, he threatened to execute the commanders.[885] In Gregory's account, Guntram portrayed the failure of the campaign as a direct consequence his people's lack of piety and their inability to follow the law, threatening his remaining forces:

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[882] LH, 5.49 (Krusch/Levison 258-263; Thorpe, 316-22). He said mass at several alters: '*Et licet canonibus essent contraria, pro causa tamen regis impleta sunt*.' Loening, *Geschichte*, II, 501.

[883] Both Guntram and Childebert II are recorded violating church sanctuary despite Gregory broadly presenting their leadership favourably (LH 9.10 & 9.12); see above.

[884] LH 9.20 (Krusch/Levison, 440;Thorpe, 508) '...*iuxta consuetudinem canonum*...'

[885] Only Fredegar records the plague – NB Chronicle of Fredegar was possibly a product of Burgundy composed c.660; *The Fourth Book of the Chronicle of Fredegar* ed. And trans. J.M. Wallace-Hadrill (London, 1960); Scholz, *Merowinger*, 150 on the 'fiasco' of a campaign.

> '*Si quis sequitur iustitiam, vivat; si quis legem mandatumque nostrum respuit, iam pereat, ne nus diutius hoc blasphemeum prosequatur*.'[886]

Whilst it is problematic to take Gregory of Tours' reported speech at face value, the rhetoric does match that of Guntram's own Edict and the preface to the Council of Macon 585, in its view of a transgression of the justice and the law as worthy of death *and* in Guntram's belief in the collective moral liability of the polity.

The functional role played by church councils in the political dynamics of the *Teilreiche* and the related belief in the imminence of *iudicium Dei* had a twofold impact upon canon law. Firstly, the idea of *canones* as a necessary component of political *auctoritas* gained currency in pan-Gallic, political discourse. Since, councils were the most high-profile and accessible source of church tradition in sixth-century Gaul, conciliar canons seem to have become almost synonymous with Christian morality. Other regions of the former Empire retained access to alternative sources of institutional or traditional authority, such as the (Apostolic) Pope or imperial law, but in Gaul it was the collegiate episcopate and canons that held a de facto monopoly on orthodox religion. Secondly, contemporaries perceived literal danger in the transgression of church tradition and the canons, i.e. *iudicium Dei* in the form of a neighbouring army (in addition to plague and famine).[887]

Much of the evidence for a widespread belief in *iudicium Dei* comes from reported speech and narrative descriptions in contemporary chronicles or hagiographies. These share a specific Christian theological paradigm, which should make us wary about inferring too much about the underlying 'legal culture'. [888] However, the intensive exchange of documents (reproduced

[886] *LH* VIII.30 (Krusch/Levison, 396).
[887] LH 8.19 Gregory recounts story of Abbot murdered, which Gregory characterized as punishment for transgressing the canons.
[888] On *iudicium Dei* in Gregory of Tours' writings see Esders 'Rechtsdenken und Traditionsbewusstsein', 121 on Gregory's desire to promote the idea *iudicium Dei* as a

verbatim) in the Nuns' Revolt, whose internal features parallel those found in the canon-law compilations,[889] in addition to the rhetoric of late sixth-century royal legislation, provide corroborative evidence that this 'judicial theory' or 'theology' was not merely a literary trope. It actually had an impact upon the use of canonical legislation, and therefore also upon 'canon law's' efficacy as normative legislation capable of shaping general expectations of behaviour.

The political dynamics of the *Teilreiche* also fostered the development of a distinctive 'canon-law culture' by elevating bishops, councils and canons as sources of continuity or stability in an uncertain world wracked by civil war. 'Canon law', as a product of a pan-Gallic episcopal hierarchy, was uniquely well suited as a tool to establish trust between counterparties and to shape expected behaviours in the context of disputes by virtue of the episcopate's strength as a corporate entity. For example, the episcopate provided 'continuity' across the different regions of Gaul. In the sixth century, Merovingian rulers often divided Gaul in a complex manner, allocating revenues from cities rather than simply carving out coherent territorial blocks.[890] This meant that in periods of division, kings and their elite followers often held claims to lands, revenues and manpower in regions distant from their own and, potentially, with differing social, institutional and legal conditions.[891] In this

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real-world phenomenon. Although, N.B. Gregory's collective works emphasized healing miracles far more than divine punishment, Bartlett, *Dead*, 36f.; Heinzelmann, *Gregory*, 63-65, sees Guntram's address as a literary climax and 'doubtless fabricated', but intended to emphasize the need to respect churches and revere God.

[889] cf. Saffaracus judgment with the Nuns' revolt judgment and conciliar procedure.

[890] On the complexity of the divisions Esders, 'Avenger', 24; text of the treaty of Andelot in which Guntram and Childebert II defined their realms made reference to Childebert holding 2/3 of the city of Senlis under his 'dominion', but later that he was to 'possess' the city completely and compensate Guntram with lands at Resson, implying that prior to the treaty they had made joint claims to the city or its resources. (LH 9.20). Subsequent clauses defined property conferred by King Guntram as 'men, cities, lands or revenues.'

[891] M. Weidemann, *Das Testament des Bischofs Berthramn von Le Mans vom 27. März 616 : Untersuchungen zu Besitz und Geschichte einer fränkischen Familie im 6. und 7. Jahrhundert* (Mainz, 1986), 79-81 describes the territory, which spanned Gaul. On diverging legal/institutional conditions in each region, see below, p. 247. Note Gregory of Tours LH 6.9, Dumnolus pleads with Lothar not to make him bishop of Avignon, with its old senatorial families and counts who spent all their time discussing

patchwork of different royal and comital jurisdictions, episcopal networks and an emphasis upon the inherent integrity of canon law provided a means of standardizing expectations surrounding the behaviour of officials, the mechanisms of dispute resolution and the security of agreements between parties.[892] We can see this 'standardizing' role playing out in the context of the Nuns' Revolt, where despite three different branches of the Merovingian dynasty being involved, a 'due process' was eventually followed by Guntram and Childebert allowing the episcopate to investigate (under their supervision). Gallic elites might have been prepared to acknowledge such an extensive judicial role for bishops towards the end of the century, partly, because the bishop offered a means of appealing against a rapacious official or neighbour in a different kingdom.

Furthermore, In Merovingian Gaul, patronage and oversight of the episcopate gave kings additional opportunities to embed their supporters in permanent positions at strategic locations across Gaul.[893] This raised the importance of those canonical rules surrounding episcopal appointments. Gregory asserted that on at least on one occasion he refused to ordain a subordinate because it did not comply with established canonical procedure.[894] Episcopal elections are themselves a major field of interest and the level of royal influence in the process of electing and ordaining a bishop undoubtedly changed over time. Orleans 511 conceded Clovis the right to veto all clerical ordinations;[895] Orleans 549, c.10 prescribed royal assent was required in

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philosophic problems; cf. Wickham, *Framing*, 171 who asserts on the contrary that the ability of Merovingian to divide their kingdoms into four distinct realms indicates that landholding of elite families was localized. He does not address references in canonical and royal legislation to property misappropriated during division of the kingdoms or civil war, e.g. Edict of Paris 17 (MGH, LL capit. I, 22); or Tours 567, c.24 (Above, p. 140).

[892] Nelson, 'Jezebels', 26 makes a similar point that since royal power was based on individual cities, bishops were essential partners for kings.

[893] Esders, 'Rechtsdenken und Traditionsbewusstsein', 177. Although, Loftus 'Elections', has argued persuasively that regal intervention in episcopal elections has been overemphasized in previous scholarship.

[894] LH 6.15 (Thorpe, 346f.), he refused to ordain Burgundio, whom Felix of Nantes' nephew, because he was only 25 and not yet a cleric and would thereby have been un-canonical.

[895] Above, p. 98.

addition to popular and clerical support for a successful ordination, and Chlothar II amended Paris 614's canon on episcopal elections (his Edict of Paris added that royal approval was required). However, canons from other councils made no mention of a royal role in the process and the *Vetus Gallica* omitted canons which acknowledged a role for the king in the process.[896] Despite the vacillation of the legislation, the general point still stands that the canonical rules gained additional significance by virtue of the patronage opportunities presented by the pan-Gallic episcopate.

The Gallic episcopate's role in providing a 'unifying' mechanism, by facilitating the distribution of patronage across diverse and periodically-divided regions of Gaul, essentially provided an 'institutional' equivalent to a simultaneous transformation occurring in the sphere of political ideology. As the Frankish empire expanded to include numerous *gentes* (e.g. the Alammani 504, southern Gallo-Romans 507, Thuringii 532, Burgundians 534, Saxons and Frisians 560s), the idea of the polity being equated with the *sancta ecclesia vel populus Dei* and the Merovingian kings as *reges christiani* became relatively more important than their 'Frankish' identity. In simple terms, as the *Teilreiche* expanded, so too did the ideological value in Christian identity and therefore also in upholding church norms (i.e. respecting canon law). The first part of this dynamic is widely acknowledged for the Carolingian era.[897] It is likely no coincidence that successive Merovingian kings chose to emphasize their respect for canon law as they secured their dominance over wide stretches of north western Europe.

Bishops in council also represented a source of political and institutional stability over time, capable of withstanding changes in secular political leadership. Champagne and Szramkiewicz's quantitative analysis of conciliar subscriptions highlighted some remarkably lengthy episcopal careers over the course of the sixth-century: 11 bishops attended councils for over 20 years and

[896] Orleans 538, c. 3 Metropolitans to be ordained in accordance with 'apostolic decrees' '*cum consensu*' comprovincial bishops (no mention of royal influence) (Loftus, 'Elections', 32); Mordek, *Kirchenrecht*, 24f.; VG Titles IV-XVII (ibid., 368-421).
[897] M. de Jong, 'the state of the church', 253;

a further six for over 30![898] The Gallic episcopate also held an essentially uncontested ability to portray itself as a bastion of continuity stretching back to the Apostles, at a time of ongoing tumult of repeated civil war. Gregory of Tours highlighted the relative longevity of an episcopal career in comparison to that of a king or queen, in Praetextatus of Rouen's Churchillian retort to Queen Fredegund after the Queen threatened him with exile:

'*Ego semper et in exilio et extra exilium episcopus fui, sum et ero; nam tu non semper regalem potentiam perfrueres. Nos ab exilio provehimur, tribuente Deo, in regnum; tu vero ab hoc regno demergeris in abyssum*.'[899]

While Gregory no doubt included this act of *parrhesia* as a narrative device to implicate Fredegund in Praetextatus' murder, it nonetheless highlights a view of bishops as resilient figures, supported (even in exile) by God and their episcopal colleagues, in contrast to the 'secular' officials of the late-sixth-century *Teilreiche*. Perhaps for this reason, as much as the newly emergent theology of wealth (or the tax incentives afforded to church lands), vast swathes of the landowning class sought to place their assets and family members under the patronage of the episcopate, thereby making it subject to canon law administered collectively by network of well-connected religious professionals.[900] The *Teilreiche* thus provided relatively unique institutional incentives for holding ecclesiastical councils and for elites to 'buy-in' both to the authority of the episcopate and its canonical regulations. Donating lands or family members to an ecclesiastical institution meant putting them under the 'jurisdiction' of canon law, which as it expanded provided ever greater levels of certainty about how the wealth would be used and what conditions the family members would live under.

[898] Champagne and Szramkiewicz, 20.
[899] LH 8.31.
[900] On scale of wealth donated to the church, see below; Fouracre, 'Beneficium', 90; D. Ganz, 'The ideology of sharing: apostolic community and ecclesiastical property in the early Middle Ages', in W. Davies and P. Fourace (eds.), *Property and Power in the Early Middle Ages,* (Cambridge, 1995), 17 - 30.

5.C Shifting institutional and legal landscape

Ecclesiastical legislation was also transformed into a binding system of norms fundamental to all forms of political authority, in part, by shifts in the underlying institutional and legal landscape of sixth-century Gaul. 'Imperial-law' mechanisms for settling disputes and securing transactions were in flux in this period.[901] Different regions of Gaul started to use different terms for senior public officials and administrative units; e.g. *comes* in the Romanized south and south-west, as opposed to *grafio* in the North East.[902] Whether and how these offices differed from one another remain subjects of debate. However, there is agreement that before the seventh century the terminology at least was distinct. [903] Both narrative and legislative sources suggest that dispute settlement amongst the Franks often relied upon the mechanisms of feud, which were alien to imperial law.[904] 'New' forms of documentation emerged in Gaul from the seventh century onwards, such as *placita*, dispute settlement proceedings between parties with a remedy sanctioned by a king or magnate. These possibly reflected parties seeking to offset the disappearance of the *gesta municipalia* (municipal archives) with alternative forms of record keeping.[905]

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[901] Above, p.118 on 'Vulgar Law'.

[902] A.C. Murray, 'The position of the *grafio* in the constitutional history of Merovingian Gaul', *Speculum* 64 (1986), pp.787-805 corresponding administrative units being *comitatus* / *pagus*. Murray defines the *grafio* as 'the King's man in the *pagus*. Precise powers of the office are debated. Also, Wormald, *Making*, 1999, 42 on character of Frankish law.

[903] Brunner, *Rechtsgeschichte* II, 217 – 23 viewed them as distinct; likewise D. Claude, 'Untersuchungen zum frühfrankischen Comitat', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte GA* 83 (1966), 4-45, 78; Murray, *Grafio*, 788, 792 and 799 onwards with further literature.

[904] P. Wormald, 'The leges barbarorum: law and ethnicity in the post-Roman West', in Goetz, Jarnut and Pohl (eds.) *Regna and Gentes: The Relationship between Late Antique and Early Medieval Peoples and Kingdoms in the Transformation of the Roman World* (Leiden, 2003), 21–53.

[905] P. Fouracre, 'Placita' and the settlement of disputes in later Merovingian Francia, in W. Davies and P. Fouracre (Eds.), *The Settlement of Disputes in Early Medieval Europe*, (Cambridge, 1986).

The multiplicity of legal customs and types of official created conditions ripe for the expansion of episcopal powers of intercession, derived as they were from an overarching Christian paradigm of justice which did not rely on any particular imperial or royal political structures. The 'multiplicity' of 'judges and jurisdictions which existed within the functioning Empire were complicated yet further by alternative forms of dispute resolution.[906] While Augustine was active in dispute settlement in early-fifth century North Africa, he attempted to strengthen the idea that the prevailing framework of justice was that provided by imperial law and that imperial officials were the ultimate holders of coercive power.[907] By contrast, Gregory of Tours in the 570s sometimes operated in contexts where parties had no regard for imperial law (or even royal power) and settled their disputes by means of honour killings and composition payments. In the infamous feud between Sichar and Chramnesind, Gregory attempted, unsuccessfully to mediate between the factions, who had resorted to retaliatory raids and hanging their victims' corpses from fences. In this environment, the role of the bishop could (or had to) extend beyond that sanctioned within the imperial legal system. Gregory actively sought out the parties (in conjunction with the local count). He appealed to Sichar and Chramnesind as 'sons of the Church' to reach a settlement, and he paid the composition required from whichever of them was found to be at fault (which turned out to be Chramnesind, whose supporters initially refused the offer).[908] It was in this 'post-imperial' legal context that the proliferation of canons modifying church asylum and episcopal intercession were required.

Furthermore, as ecclesiastical asylum and episcopal mediation became common to the point of ubiquity, wide sections of society gained an incentive to take an interest in church tradition and perhaps therefore also in canon law.[909] For example, Gregory of Tours recorded Eberulf, Chilperic's treasurer, inflicting

[906] Cf. Humfress, 'The Bishops and Law Courts'.
[907] Ch.1.
[908] LH 7.47 and 9.20; Esders, 'Rechtsdenken', 111; James, 'Beati',
[909] On the ubiquity of episcopal mediation, see James, 'Beati'; Esders, 'Rechtsdenken', esp. 108 and 112 highlighted the growing importance of church asylum as Gallic legal culture shifted from imperial to post-imperial paradigm.

a litany of indignities upon himself and the clergy at Tours, as the Frank took refuge in St Martin's Church. Amongst them, Gregory included an incident in which Eberulf drunkenly berated him for obstructing his access to the *fimbriae* (Thorpe translates as 'tassels') hanging from the Martin's tomb. Gregory had boarded up the shrine to stop Eberulf and his followers gawping at it, but the *fimbriae* were Eberulf's only means of proving he had claimed asylum in the church (should he be forcibly removed).[910] The episode illustrates how political elites by the end of the sixth century were intimately familiar, as a matter of course, with the episcopal church and its canonically-defined privileges and procedures. 'Canon law' had penetrated Gallic society as a normative system of fundamental importance.

This is not to say that church tradition and canon law regulating aspects of dispute resolution were always respected. There are numerous instances of canons being violated.[911] Nevertheless, both literary and legislative sources suggest the institution of asylum was robust enough that rulers seeking to limit its efficacy had to work around it, rather than amending it directly as had Roman emperors. A law of Childebert II implied that those guilty of *raptus* who attempted to flee to a church were to be executed, whereas those who did not could redeem themselves.[912] Guntram's chamberlain, Chundo, was stoned to death in order to stop him reaching a church, whilst Chilperic had St Martin's Church barricaded to stop Merovech seeking asylum.[913] Whereas Roman emperors could theoretically change the terms of church asylum in their

[910] LH 7.22 Krusch/Levison, 341; Thorpe, 404.
[911] LH 6.36 An adulterous priest was subjected to 'Frankish' justice three times; LH 8.29 Two clerics executed for assassination plot against Childebert; LH 8.31 Praetextatus was murdered – n.b. P. Fouracre, 'Why Were So Many Bishops Killed in Merovingian Francia?', in *Bischofsmord im Mittelalter*, ed. N. Fryde and D. Reitz, Veröffentlichung des Max-Planck-Instituts für Geschichte 191 (Göttingen, 2003), 13 – 35, who identifies 18 murdered bishops between 580 and 751; LH 8.20 A layman, Nicetius, ordained bishop at Macon; LH 8.31 Bishops engage in torture and execution (contra Macon 585, c. 19); LH 5.14 Gregory permits Merovech to consult *sortes sanctorum* in his church. For further examples, Esders, 'Rechtsdenken', 117-19; for considerations on whether or to what extent canon law was 'enforced', Halfond, *Archaeology*, ch.4; Wallace-Hadrill, *Church*, ch.4, pp. 107-8; Nelson, 'Law'; McKitterick, 'Knowledge'.
[912] Above, p. 198.
[913] James, 'Beati', 39.

legislation, Merovingian kings established their compact with the bishops after the latter had taken on the job of defining the institution for themselves in the late fifth/sixth centuries. The effective transformation of asylum from a subject modified by the legislation of the ruler to one defined by conciliar legislation (chapter three) was instrumental in forcing Merovingian rulers to work around rather than to amend directly the terms of asylum.

The shifting institutional landscape also led to churches becoming more important as '*loci credibilis*', locations for announcing and recording transactions or swearing oaths (although, admittedly, this was also probably true to a certain extent of the imperial era).[914] We cannot be certain whether or to what extent municipal archives, *gesta municipalia*, survived in Gaul. Formularies from the seventh century and later mention them as part of the process for conducting transactions; however, some of these references are thought to be anachronistic.[915] They probably ceased to function in Gaul by the seventh century and at roughly the same time, churches emerged as important locations both for storing written documentation and for swearing oaths.[916] As we saw in Chapter Four, the documents generated to secure Radegund's foundation were stored in episcopal archives and subsequently cited in order to resolve disputes over the running of the nunnery.[917]

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[914] Esders, 'Rechtsdenken', 109 argued oaths were given new prominence in the absence of an effective state-guarantee of enforcement. However, recent work has emphasized the ubiquity of oath-swearing in the late-Roman Empire: Uhalde, *Expectations*, 77 onwards argued Augustine was forced to accommodate oath-swearing through the responsibilities of the *audientia episcopalis*; also Meyer, *Legitimacy*, 134f.; Wood, 'Disputes', 17.

[915] Wickham, *Framing*, 111; Esders, *Rechtstradition*, 403.

[916] Rio, *Legal Practice*, 181 links rise of churches as *loci credibilis* with disappearance of the *gesta municipalia* and cites extensive literature on the disappearance of the *gesta municipalia*; McKitterick, Carolingians, 89-90.

[917] An example that suggests characterizations of early-medieval privileges and charters as, 'the product of artifice', or conclusions that they were, 'never the instrument by which action was taken' but rather a 'stylized record' (R. Morris, 'The problems of property', in T. Noble and J. Smith (eds.), *The Cambridge History of Christianity, vol. 3: Early Medieval Christianities, c. 600 - c. 1100* (Cambridge, 2008 / Online publication 2010), 327 – 344, at 328), ought to be caveated. In late sixth-century Gaul, at least, there was a brief period when high-profile documents might be cited and used as the basis for an action.

As churches became more important as mechanisms for establishing trust, and as God or the saints joined the Emperor (and kings) as guarantors for transactions, lay donors and counterparties to agreements gained a material interest in upholding the norms of the Church. Gregory of Tours promoted the view that God took an active role in legal transactions. Every unlawful act was punished accordingly.[918] He depicted all sections of society (rustic ascetics, townsfolk, counts and kings) buying-in to this ideology.[919] He was not alone in promoting this idea. Bishop Nicetius of Trier developed a 'complex judicial theology' which allowed him to become an expert in detecting perjury via the cult of saint Maximinus.[920]

Additionally, episcopal legal powers became fundamental to legal-social categories. Churches provided an important mechanism for manumitting slaves, and it was in this period that 'freedmen', whose rights were enshrined in Gallic canon law, emerged as one of the largest social classes in Gaul. Admittedly, it is difficult to quantify this development. '*Liberti'* were a recognised social category in fourth-century Roman and canonical legislation, but the term referred to manumitted slaves rather than the permanent class of 'freedmen'.[921] Precisely when freedmen became a significant social class is not entirely clear. In the Visigothic Kingdom, the Code of Euric (late fifth century) mentions only *servi* and *ingenui*, likewise the Breviary of Alaric (506) omitted laws against *liberti* testifying against their former masters.[922] By contrast, the seventh-century 'Chindasvindian Code' acknowledged freedmen as a social class, and Visigothic church councils legislated extensively on freedmen in the seventh century.[923] Sixth-century Salic law mentioned free and unfree, as did seventh-century

[918] Esders 'Rechtsdenken', 121.
[919] Ibid.; above, Ch.4.
[920] Esders, 'Avenger', 31.
[921] Elvira 306, c.80 *libertus* whose master was still alive could not join the clergy; Nov. Val. III 4.10, the manumitor is owed '*obsequium'* 4.10.1 the *libertus* was subject to minor restrictions in matters of inheritance; Toledo 400, c.10 *libertus* can join the clergy with his patron's consent.
[922] Claude, 'Freedmen', 163.
[923] CTh 4.2.10; Nov. Val. III 25.9 Claude, 'Freedmen', 162. & 172

formularies.[924] It is possible *liberti* were not a substantial social group until the later sixth century.[925] As we have seen, Gallic church councils started legislating on *liberti* extensively from the mid-fifth century onwards.[926]

Canon law defined one of the key mechanisms for creating this social class. *Manumissio in ecclesia* remained one of the key mechanisms for freeing *servi*.[927] Furthermore, an individual manumitted in church became a client of the bishop or church, i.e. owing some form of labour in return for legal (and social or political) protection.[928] (It is worth noting that under Roman law the patron could claim a portion of the freedman's inheritance, if he died childless, and its totality, if he died intestate).[929] As we have seen, conciliar canons and royal legislation defined the bishop's ability to adjudicate legal disputes involving such persons. Canons also imposed punishments for anyone who sought to violate the rights of freedmen, seemingly these rules applied even to all freedmen, not just those manumitted in church.[930] Gallic conciliar canons also regulated the legal status of children whose parents sold themselves into slavery.[931] It is possible, therefore, that large numbers of people in Gaul came to rely upon the bishop as a potential upholder of their rights as defined in canon law.

Canonical regulations were also transformed into 'practical' legislation of relevance to wide swathes of society by the influx of wealth and lands to church

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[924] *Pactus Legis Salicae* 9.8, 15.4 (Eckhardt 61, 94); Form. Marculf II, 29; A. Rio, 'Freedom and Unfreedom in Early Medieval Francia: The Evidence of the Legal Formulae', *Past & Present* no. 193 (2006), 7 - 40.

[925] ibid.; Thompson, *Goths*, 306f.

[926] Above; Esders, *Formierung*, 34 onwards.

[927] Although n.b. Macon 585 asserted church patronage for *liberti* manumitted by any means; also peculiar to Frankish law was the '*per denarium*' manumission Claude 181, n.3.

[928] The testament of Remigius of Reims (†533), makes provision (commendations) for three '*redempti*' and '*servi*' he freed, which imply that they were in some way dependent upon him (MGH, SRM III, 338f.). Likewise, the testament of Bertram of Le Mans (615) specifies certain *redempti* were to remain free while others were willed to his nephew (Klingshirn, 'Charity', 201, n.134 and 136).

[929] Nov. Val. III 25.2-3 (447).

[930] Above, p. 175.

[931] Orleans 549, c.14 (MGH, concil. I, 104).

institutions during the sixth century.[932] Conciliar legislation (rather than imperial law) became a key medium through which 'religious property' was governed. On the one hand, Merovingian rulers inherited the right of emperors to confer fiscal immunity and to confirm the inheritance of estates via royal charters.[933] (They also sometimes misappropriated church property by challenging testamentary bequests).[934] However on the other, since canon law was the dominant genre through which ecclesiastical property was regulated, Merovingian kings also saw value in obtaining canons to act as 'comfort letters' from the episcopate for their own foundations. Orleans 549, c. 5 for Childebert's xenodochium at Lyon was the earliest example, Radegund's nunnery at Poitiers a second. [935] Once canons joined imperial- and Merovingian documents as potentially influential instruments for determining how organizations and wealth should be handled, it was perhaps inevitable that they would be used (in some instances) like legal instruments. This perhaps helped to encourage a 'legalistic' approach to interpreting conciliar *acta*, which in turn might explain why we see phenomena like Chilperic's close reading of Apostolic Canons at Praetextatus' trial, or the sophisticated *Vetus Gallica* project.

When trying to assess the impact it had upon canon law, it is worth bearing in mind the staggering scale of 'church wealth' in the sixth century, whether controlled directly by bishops or not. Recent work has argued that the fifth and (particularly) the sixth century saw enormous amounts of wealth (i.e. often land) donated to religious institutions. Ian Wood defended Paul Roth's original estimation that around one third of cultivated lands were in the hands of 'the Church' by the end of the Merovingian era.[936] Monastic archives only go back as far as the seventh century, but these indicate institutions possessed

[932] S. Wood, *Proprietary Church*, 2; Wallace-Hadrill, *Frankish Church*, 94-104.
[933] Esders, *Rechtstradition*, 140f.
[934] E.g. Chilperic Greg. Tour. LH 6.46; on Chilperic and church wealth: Esders, Rechtstradition, 137-41; Brown, *Eye*, 493.
[935] S. Wood, *Proprietary Church*, 24. Notes that Guntram made grants for Saint-Marcel (Chalon-sur-Saône), Saint-Symphorien (Autun), and any other holy places.
[936] Wood, 'Entrusting', 37; Reynolds, *Fiefs*, 77; Wallace-Hadrill, *Church*, 138 also accepts 'the Church' might have held *dominium*, or legal ownership, for c.1/3 lands in Gaul by the eighth century, but supposes much would have been leased to tenants for a census or quit rent.

enormous levels of wealth.[937] An estimated c.220 monasteries existed by the end of the seventh century and, interestingly, those in the north were better endowed.[938] The growth of estates held directly by the episcopal churches was equally significant. Four episcopal wills survive from the Merovingian period, some of which show astonishing levels of wealth under the control of select bishops.[939] Most notably, Bertram of Le Mans is estimated to have held 0.5% of the cultivated land in Gaul, with estates spread across several regions.[940] Whilst Bertram was a member of Chlothar II's inner circle, he was probably not from a noble family.[941] The estates in his testament likely represent the wealth of his see (no doubt expanded by royal patronage).[942] Clovis and his followers donated large amounts of land and wealth to churches, perhaps lands acquired during their conquest of Aquitaine. Certainly, in the seventh century, from which larger numbers of charters survive, it appears to have been common for northern churches and monasteries to hold estates in Aquitaine.[943] Peter Brown has also highlighted the tendency of narrative and epistolary sources to celebrate the 'managerial bishop', bishops skilled at estate management and administration, during the sixth century.[944] A phenomenon suggesting that the episcopate had to contend with substantial property portfolios.

Canon law arguably played a not insignificant part in facilitating this sixth-century flow of donations. In addition to spiritual reward, donors would also have been aware that church lands were exempt from certain taxes and public

[937] Wood, 'Entrusting', 40; Prinz, *Mönchtum*, also endorsed c.200 monasteries by c.600.
[938] Ibid.
[939] N.B. Liebs, *Jurisprudenz*, 101 notes that only c.60 Roman-law testaments survive from the Merovingian era, and the vast majority date from 570-630 and were from 'princes of the Church.'; Wickham, *Framing*, 186 gives an overview of Merovingian testament and charter evidence with editions.
[940] The will dates from 616. Weidemann, *Das Testament des Bischofs Berthramn*, 79-81; Wickham, *Framing*, 186.
[941] Wickham, *Framing*, 186.
[942] Wood, 'Entrusting',
[943] Wallace-Hadrill, *Church*, 125f.; he notes also that Bertram also left Aquitainian property to Le Mans.
[944] Brown, *Eye*, 497, for Gaul cites Gregory's description of his maternal uncle, Nicetius of Lyons (fl.552-575) LH 4.36.

services.[945] As we saw, the earliest reaffirmation of this imperial-law privilege in Merovingian Gaul was made by Clovis but (crucially) confirmed in the *acta* of Orleans 511.[946] It became common in the sixth century for landowners to donate the *dominium* of estates to a religious foundation, whilst retaining the *usufruct*.[947] Furthermore, by donating land to a church, donors received the protection of the expanding canonical legislation prescribing excommunication for despoilers of church property. This might have been useful in an environment where Franks were not subject to imperial property laws. Successive kings also promised to respect the integrity of church properties.[948] Donating property to a church potentially also provided a way for wealthy landowners to steward wealth as they chose (i.e. away from their kin groups), although the evidence here is somewhat inconclusive.[949]

Conversely, canon law itself was transformed by the inflow of wealth. The expansive regulations outlined in Chapter Three regarding the status and management of *parochiae*, *oratoriae*, *capellae* and *monasteria* were generated in response by the episcopal hierarchy to defend its monopoly on running organized religion and its ability to mediate 'orthodox' religion.[950] They defined the terms upon which laity could 'invest' their wealth in church institutions. These canonical regulations acted almost as the rules of a vast franchise operation, in which landowners sought set up and run foundations (under the

[945] On the development of a theology of wealth, Brown, *Eye*, and *Ransom*.
[946] This is not to say that there were not also royal edicts conferring privileges. The *Praeceptio Chlothari* (584 – 629) conferred fiscal immunities upon church properties and made reference to similar concessions from Chlothar I (511 – 561) Murray, 'Immunity revisited', 917 and 919 onwards; Esders, 'Abgaben', 189-224 traces continuities of tax system into Charlemagne's time; Scholz, *Merowinger*, 72-74.
[947] P. Fouracre, 'The use of the term beneficium in Frankish sources; a society based on favours?', in W. Davies and P. Fouracre (eds.) *The Languages of Gift in the Early Middle Ages* (Cambridge, 2010), 62 – 89.
[948] See Clovis' letter to the bishops of Gaul above and Chlothar I's Decree given when sole king of the Franks, an order to royal agents to respect previous concessions to churches (558) (MGH Capit. I, 18-19).
[949] S. Wood, *Proprietary Church*, 18-18; cf. stronger case for Anglo-Saxon England, Cubitt, *Councils*, 70-74.
[950] On the different status of *oratoria, parochia*, S. Wood, *Proprietary Church*, 66-67 argues that in sixth-century Gaul, the distinction between *parochiae* and 'private' *oratoriae* broke down (especially in the North), so that landowners exercised greater influence over *parochiae*.

umbrella of episcopate-defined orthodoxy), which were capable of generating them spiritual reward in return. The apparent scale of lands potentially associated with religious institutions by the end of the sixth century (in combination with the proliferation of church councils outline above) would have multiplied the potential opportunities for parties to argue about the terms of the foundations, in a manner akin to the resolution of the Nuns' Revolt (although surely rarely on such a grand scale). That is to say, the influx of this wealth created incentives for parties within and without the episcopal hierarchy to cite 'canonical' documents and argue about the specific terms of the legislation.

5.D Relations with Rome

A final 'condition' of post-imperial Gaul which is essential for understanding why canon law continued to develop as it did in the sixth century was the relative autonomy of the Gallic episcopate from figures of authority in other regions of the former Empire, the pope and emperor. We saw in Chapter Two how the formation of successor kingdoms in late fifth-century Gaul resulted in de facto institutional 'independence' for most metropolitan bishops from Rome. New canonical legislation was produced at a local level and the incentive to appeal directly to the pope for a decision on a point of ecclesiastical organisation or discipline was reduced. (Although this was less true for Provence, which remained an 'Italian' enclave for most of the first half of the century).

From 535 onwards, this organizational division between Italy and Gaul was widened by the violent conquest of Italy by the Eastern Empire.[951] Justinian's conquest of Italy had two impacts relevant to canon law in Gaul. Firstly, it plunged the Italian peninsula into decades of increasingly devastating warfare (the Romano-Gothic wars created such a vacuum that they facilitated a second invasion by the Arian Lombards in 568), during which time living

[951] On the 'division' of the Gallic Church and Rome, see Hauck, *Kirchengeschichte*, 425-30 who characterizes Rome's authority in Gaul as only a 'moral authority'.

standards and urban populations declined.[952] As we have seen, this extended period of warfare removed the possibility that Gaul (or even just Provence) would be ruled directly from Italy and thereby diminished some of the de facto potency of the Pope's interpretations on matters of church discipline or ecclesiastical hierarchy (if not on theological or liturgical matters).[953]

The second crucial impact of the invasion was that it reincorporated the bishop of Rome into the Eastern imperial sphere, and thereby forced him to engage with the ongoing 'Three Chapters Controversy'.[954] As successive emperors had sought to reconcile warring 'miaphysite' and 'Chalcedonian' (or diophysite) factions, each with varying levels of support across the Eastern Empire, popes came under increasing pressure to endorse theological positions at odds with other western churches.[955]

It is hard to establish a causal relationship, but the enmeshment of successive popes in the Three Chapters Controversy corresponds with a rare window of relative institutional self-confidence and autonomy on the part of

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[952] C. Wickham, *Early Medieval Italy: Central Power and Local Society, 400 - 1000* (1981), 64 – 77.

[953] Ch.3.

[954] P. Allen, 'The definition and enforcement of orthodoxy', ch. 27 in A. Cameron, B. Ward-Perkins and M. Whitby eds. *The Cambridge Ancient History vol. 14 Late Antiquity: Empire and Successors, AD 425 - 600*, 811 – 834; R. Price (trans.) with P. Booth and C. Cubitt, *The Acts of the Lateran Synod of 649,* Translated Texts for Historians vol. 61 (Liverpool, 2014), 1 – 4; R. Markus and C. Sotinel, 'Introduction', in C. Chazelle and C. Cubitt eds. *The Crisis of the Oikoumene: The Three Chapters and the Failed Quest for Unity in the Sixth-Century Mediterranean* (Turnhout, 2007), 1 - 16.
Chalcedon 451 defined Christ as 'acknowledged in two natures' (one divine, one human). However, in the East many subscribed to Cyril of Alexandria's Christological formula, 'one incarnate nature' (given the contemporary label, 'miaphysite'). The 'in two natures' formula at Chalcedon had been adopted at the insistence of Roman delegates backed by the Emperor Marcian's officials. Eastern bishops remained critical of the implicit duality of Chalcedon's settlement and eventually succeeded in shifting the emphasis at Constantinople (II) 553, which agreed that all Christ's actions were to be ascribed to God the Word (cs.2 and 3) and condemned three theological tracts associated with Chalcedon as 'Nestorian' (a Christological doctrine which saw Christ as possessing two entirely distinct natures). These 'Three Chapters' included works by Theodore of Mopsuestia (delivered at Chalcedon) and Theodoret of Cyrus and Ibas of Edessa (delivered at the preceding council of Ephesus 431), who were all acquitted at Chalcedon.

[955] Justinian called together representatives of the 'Chalcedonian' and 'miaphysite' factions in 532 and proposed condemning the Three Chapters in order to reconcile everyone to Chalcedon. He issued an edict of condemnation in 543/4.

the Gallic episcopate. Pope Vigilius (537 – 555) eventually succumbed to imperial pressure and subscribed to Justinian's proposed condemnation of the Three Chapters, after the Second Council of Constantinople 553.[956] The precise impact of Vigilius' capitulation upon relations between Rome and Gaul is debatable. It is not clear how cognisant Gallic bishops were of the intricacies of Eastern Christological disputes (conducted in Greek). A generation earlier, Avitus of Vienne appears to have badly misconstrued fundamental elements of the debate,[957] whilst the council of Orleans 549 confusingly issued an endorsement of the pope's 'Chalcedonian' stance shortly after Vigilius' decree of conciliation with Justinian's position.[958] What is clear, however, is that from the time of the Three Chapters Controversy onwards, Gallic bishops (and possibly kings) in addition to the churches of Milan and Aquileia apparently felt comfortable challenging the theological stance of the pope and eastern emperor.[959] Conversely, successive popes including Vigilius and Pelagius attempted to play down the capitulation in correspondence with parties in Gaul, by stressing their commitment to the first four undisputed ecumenical councils and omitting direct references to Constantinople 553.[960] Some have

[956] It is not clear whether Vigilius was abducted to went of his own volition to Constantinople in 545, spending two years in Sicily and arriving in 547. He initially issued a statement of reconciliation with Justinian's condemnation of the Three Chapters (548), then resisted an imperial edict on the same subject (551). He then excommunicated those who condemned the Three Chapters (552). He initially refused to participate in Constantinople 553, but eventually capitulated. He died in Sicily en route back to Rome.

[957] I. Wood, 'The Burgundians and Byzantium', in A. Fischer and I. Wood eds. *Western Perspectives on the Mediterranean. Cultural Transfer in Late Antiquity and the Early Middle Ages, 400 - 800 AD* (London, 2014), 1 – 17, 9.

[958] MGH, Concil. I, 101; Herrin, *Formation*, 121 believes Orleans meant to endorse Vigilius' original position; also the conclusion reached by I. Wood, 'The Franks and Papal Theology, 550 - 660', in C. Chazelle and C. Cubitt (eds.) *The Crisis of the Oikoumene, The Three Chapters and the Failed Quest for Unity in the Sixth-Century Mediterranean* (Turnhout, 2007), 224.

[959] Pope Pelagius to Sapaudus of Arles (558-60), the Pope complained because Sapaudus had accused him of incorrect belief (*epistolae aevi Merowingici collectae* no.5); Pelagius sent two letters to Childebert I justifying his faith (*epistolae Arelatenses* nos. 48 and 54); Nicetius of Trier to Emperor Justinian (pre-565) Nicetius rebukes Justinian for engaging with Nestorian and Eutychian heresy (*epistolae Austrasicae* 7).

[960] Vigilius to Aurelius of Arles (550) (Epistolae Arelatenses, 45), The strategy was continued by popes Pelagius II and Gregory I (I. Wood, 'Franks and Papal Theology').

inferred that the prestige of the bishop of Rome was reduced in Gaul as it was in other western churches.[961]

From the middle of the sixth century onwards, there is much less extant evidence that bishops solicited contemporary papal interpretations on matters of church discipline or ecclesiastical hierarchy. What little correspondence there was between Gaul and Rome was more often carried out between popes and Frankish royalty than with the Gallic episcopate.[962] A caveat must be inserted here for Provence, a region in which the Diocese of Rome continued to hold lands and whose geographic location gave it stronger political links with the Eastern Empire.[963] Canon-law compilations associated with Arles and Provence tended to label parts of their contents as having been compiled in the city of Rome,[964] and the *Liber Auctoritatum Arelatensis Ecclesiae*, put together in (almost certainly) Arles in the mid-sixth century, contains decretals of Pope Pelagius I (555 - 560) and Pelagius II (578-590) otherwise entirely unknown in western canon-law compilations (until the *Liber Auctoritatum* was used as a source by Ivo of Chartres in the twelfth century).[965]

However, the energy for canon-law conciliar activity and compilation seems to have shifted away from Arles, northwards to the episcopal centres of Lyons and Vienne around the middle of the sixth century.[966] Crucially, the decretals of Pelagius I (555 - 560) and his successors, John III (561 – 574), Benedict I (575 – 579) and Pelagius II (579 - 590), appear to have been almost

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Gregory I was the first pope to admit there had been a change of position in Rome during the controversy. (Markus and Sotinel, 7).

[961] For an overview of the controversy and the resultant schisms with Italian and African churches see, Markus and Sotinel, 1 – 14 and esp. 265-77. On the resultant contortions C. Sotinel, *Church and Society in Late Antique Italy and Beyond* (Farnham, 2010), III 'Vigilius in the *Liber Pontificalis*: a memory lost, or manipulated?' [*(Mémoire perdue ou mémoire manipulée: le Liber Pontificalis et la controverse des Trois Chapitres), L'usage du passé entre Antiquité tardive et Haut Moyen Age. Hommage à Brigitte Beaujard, eds. C. Sotinel and M. Sartre. Rennes, 2008, pp. 59 - 76*], 1 - 21.

[962] Ubl, *Inzestverbot*, 148.

[963] On papal estates in sixth- and seventh-century Provence, see Wallace-Hadrill, *Church*, 113-4; on Provencal links with the East, Hauck, *Kirchengeschichte*, 420-25.

[964] Turner 'Arles and Rome', 242ff

[965] *Liber Auctoritatum* is concerned with the privileges of the clergy and church of Arles, hence its attribution (Jasper, *Letters*, 32); On influence its influence, ibid., 80; Maaßen, *Geschichte*, 300f.

[966] Mordek, *Kirchenrecht*, 74-5; Jasper, *Letters*, 33.

entirely unknown in the rest of Gaul. Only one decretal, Pelagius II To Bishop Aunarius of Auxerre '*Landanda tuae*', is attested in a pre-Gratian collection originating from Gaul (beyond Provence) (the collection of the Pithou MS).[967]

In stark contrast, the decretals of earlier popes, and particularly those from Siricius to Leo I, can be found in virtually all of the oldest Gallic canon law collections and usually in considerable numbers. This distribution is now thought to have been achieved by the circulation of small 'proto-collections' of papal decretals in the fifth and sixth centuries (rather than via the reception of a single 'official' collection from Rome) and, in the sixth century, via the reception of Dionysius Exiguus' collections in Gaul.[968] The majority of decretals from Vigilius up to Gregory the Great were apparently unknown in Francia until the ninth century, when compilers received collections directly from Italy.[969]

Even Gregory the Great (590 – 604) corresponded *relatively* infrequently with bishops in Gaul, and when he did, he largely pursued his own agenda, rather than responding to queries on points of canon law.[970] In 593 he relied upon the bishop of Milan for news from Gaul, and his first recorded contact

[967] Maaßen, *Geschichte*, 301.

[968] Jasper *Letters*, 22ff. Eight decretals issued by popes from Siricius (d.399) to Celestine (d.432) are found in all of the oldest Gallic (and Italian) canon law collections. Siricius to Himerius of Tarragona JK 255; Innocent I to Victricius of Rouen JK 286, to Exsuperius of Toulouse JK 293, to bishops of Macedonia and Dacia JK 303, to Bishop Decentius of Gubbio JK 311; Zosimus to Bishop Hesychius of Salona JK 339; Celestine to the bishops of Vienne and Narbonne JK 369, to the bishops of Apulia and Calabria JK 371 (Jasper & Fuhrmann, 22).
G. Dunn, 'Collectio Corbeiensis, Collectio Pithouensis, *and the earliest collections of papal letters*', in B. Neil and P. Allen eds., *Collecting Early Christian Letters, From the Apostle Paul to Late Antiquity* (Cambridge, 2015), 175 – 205 argues contra Wurm for fragmented, ongoing reception of decretals in Gaul individually or in small collections.

[969] Jasper, *Letters*, 68.

[970] Although Halfond, *Archaeology*, 131 concludes Gregory was 'relatively well informed about events in Gaul' compared to his predecessors; T. F. X. Noble, 'Gregory of Tours and the Roman Church', in K. Mitchell and I. Wood (eds.) *The World of Gregory of Tours* (Leiden, 2002), pp. 145 – 163, 156: 55/100 papal letters sent to Merovingian Gaul were sent by Gregory I. However, Noble highlights surprising areas of ignorance in the part of Gregory about Gaul. Note a substantial amount of sixth-century papal letters were addressed to royalty rather than bishops, (157). R. Markus, *Gregory the Great and his World* (Cambridge, 1997), 125 – 140, casts Gregory as struggling to reunite the western Churches.

with the Gallic episcopate was made via Jewish merchants from Marseilles.[971] Much of his correspondence concerned the management of the estates in Provence.[972] The letters of introduction he sent to several Gallic bishops to facilitate Augustine's mission to Kent were largely formulaic.[973] Epistles V.59 and V.60 to King Childebert II and the bishops of Gaul in general were the only two exceptions and these were most likely sent along with letter V.58 to Vigilius, Archbishop Arles.[974]

As with all later-sixth century popes, there was no real question of Gregory offering direct organisational leadership to the Gallic church. It has been noted that Gregory's repeated calls for an end to simony in Gaul followed a fixed formula also used in correspondence with bishops of Illyricum, Prima Justiniana and the churches of the East, and are perhaps indicative of a 'house style' for the papal *scrinum*, rather than evidence of Gregory's intimate knowledge of the state of the Gallic Church.[975] However, this is not to say that bishops in Gaul and Italy were hermetically sealed from one another. There was undoubtedly a continuous flow of personnel, liturgical innovations, relics and literature across the Alps.[976] Recent scholarship has highlighted various types of cultural exchange between Francia, Italy and the Greek-speaking East, which previously have been undervalued (not least as a result of regarding churches

[971] Ep. 9.212, 226, 11.43, 44 to the bishop of Milan; Ep. 1.45 to the Jewish merchants of Marseilles.

[972] On Candidus, Markus, *Gregory*, 170. The first five books of Gregory's *Registrum*, contain only six letters to Gaul, four of which were directed to Provence 1.45, 3.33, 5.31 to recipients in Arles; cf. *The Letters of Gregory the Great*, trans. with introduction and notes by J. R. C. Martyn (3 vols.) (Toronto, 2004), 52. Markus, *Gregory*, 113 notes even in later years the overwhelming majority of Gregory's correspondence was directed to recipients in Provence.

[973] Markus, *Gregory*, 180.

[974] Ibid*.,* 170.

[975] Ibid., 172: Ep. 5.16 (Prima Justiniana); 58; 8.4; IX.216 (Gaul); 5.62, 63; 6.7 (Illyricum); 9.136; 9.28 (churches of the East).

[976] Amandus, a missionary monk from Rome, was pressed to become bishop of Maastricht by Chlothar II (629). Asked Pope Martin to endorse his decision to resign his see. Martin asked him to convene a council and affirm the acta of the Lateran Synod of 649 Price, Booth, Cubitt, *Lateran Synod*, 79). Bishops from Anglo-Saxon England travelled (presumably through Gaul) to Rome. Cubitt, *Councils*, 8 mentions Bishop Mellitus attending a council in Rome 610 and reporting its decisions back. See also Gregory I's correspondence, as above.

through the prism of discrete *Landeskirchen*). Furthermore, from the seventh century onwards, Gallic bishops arguably became more receptive again of papal decretals as a source of law. Seventh-century recensions of the *Vetus Gallica*, for example, were supplemented with greater numbers of decretals.[977]

The latter half of the sixth century was a narrow window in which the volume of correspondence between Rome and Gaul appears not to have been substantive enough to fulfil the growing demand for new ecclesiastical regulations in Gaul. The *Vetus Gallica*, contained only one papal decretal.[978] Of the ten sixth-century Gallic councils to mention the pope, Rome or '*sedis apostolicae*' as a source of authority in their *acta*, two referred to ritual or liturgical practices being instituted because they were the practice of the Church of Rome;[979] whilst four were to pronouncements issued pre-Chalcedon (i.e. they were 'historic' summaries of custom, rather than interpretations from a contemporary pope).[980]

This dearth of documentary evidence for direct appeals to Rome is corroborated by the narrative sources. Gregory of Tours mentions only two instances of bishops launching appeals in Rome.[981] The first, that of Bishop Brice of Tours (397 – 444), predated the emergence of successor kingdoms.[982] The second, the trial of the infamous bishops Salonius of Embrun and Sagittarius of Gap, involved King Guntram appealing to the pope in order to circumvent a conciliar judgment of the Gallic episcopate, and receiving in return a semi-hostile response from his Gallic bishops.[983] It is worth outlining the incident, because it arguably demonstrates a strengthening corporate identity amongst

[977] Above, p. 183.
[978] Despite its compilers drawing from the 'pro-Rome' *Collectio Corbeiensis* (Mordek, *Kirchenrecht*, 58). Note, that papal decretals were added to the collection in later recensions.
[979] Vaison 529, c.3 & 5; Orleans 541, c.1. See APPENDIX 2.
[980] Tours 461, c.1; Agde 506, c.9; Orleans 538, c.26; Tours 567, c.20-22.
[981] Noble, 'Gregory' surveys Gregory of Tours' works for references to the Roman Church and points out that Gregory shows a remarkable lack of interest in the papacy in general.
[982] LH 2.1.
[983] LH 5.20.

the Gallic episcopate and a corresponding hostility to Guntram attempting to circumvent their authority by appealing to Rome.

Salonius and Sagittarius were two favourites of King Guntram. According to Gregory, they were widely acknowledged to be unfit for episcopal office and committed a string of transgressions culminating in the robbery and assault of their colleague, Victor of Saint-Paul-Trois-Chateaux. After a public outcry, they were duly deposed by an episcopal council. However, Salonius and Sagittarius used their personal connections to Guntram to overturn the sentence. Guntram could not challenge the episcopal judgment himself, however, he did provide them with a letter of introduction, which allowed them to visit the Pope, who overturned their sentence and recommended their reinstatement. The Gallic episcopate then excommunicated their victim, Victor, who had reconciled himself with Salonius and Sagittarius in the presence of King Guntram. Victor was excommunicated on the basis that he must have made false accusations against the pair. Guntram intervened again and requested Victor be readmitted, which he was.

It is not entirely clear, but the most plausible explanation for the Gallic episcopate excommunicating Victor (apparently against the wishes of Guntram) is that the episcopate were angry that one of their number had colluded with the King and his favourites in order to overturn its disciplinary decision and readmit two manifestly unfit bishops, thereby bringing their office into disrepute. At the very least, Victor's excommunication seems to signal continued resistance to Guntram, Salonius and Sagittarius from the rest of the episcopate, even in the face of papal support for their readmission. In this sense it chimes with the earlier examples of church councils insisting upon procedural regularity in disciplinary matters, even at the expense of the convening king.

Conclusions

This chapter has argued that canon law continued to develop and to take on a uniquely important role in Merovingian Gaul for three broad reasons. First

amongst them were the peculiar political and institutional dynamics of the *Teilreiche*, or 'divided realms'. Under each generation of Clovis' successors, Gaul was divided among several heirs. Periods of unity were marked by pan-Gallic episcopal councils, which allowed the episcopate to maintain a 'unified' Gallic legal and ecclesiastical culture. Conversely, periods of disunity and competition between kingdoms allowed the episcopate to assert ideological and institutional privileges (even against relatively strong kings) and thereby created contexts in which 'maximalist' formulations of the *audientia episcopalis* and *privilegium fori* made sense. The periods of disunity also elevated episcopal networks (and canon law) as a source of relative continuity and stability. This meant real wealth and key social norms could be anchored by incorporating them into conciliar legislation. Episcopal councils were uniquely useful institutions in Merovingian Gaul, which encouraged intermittent periods of intense conciliar activity and thereby promoted the development of canon law as a system of practical norms.

Canon law also developed into an increasingly 'practical' and 'outward-facing' genre of legislation which defined key areas of economic, legal and social activity, partly in response to ongoing changes in the underlying institutional or legal-social landscape. New opportunities for bishops and churches to perform a wide array of legal functions were opened as competing modes of dispute resolution, new social categories and new notions of property ownership emerged. The large-scale influx of landed wealth to episcopal churches and monasteries made canon law directly relevant to diverse sections of society (both donors and tenants). The final factor was the separation of Gaul and Rome as a result of the East-Roman invasion of Italy and Three Chapters Controversy. These conditions compounded divisions between Italy and Gaul and further empowered Gallic bishops and kings to take responsibility for the production and implementation of ecclesiastical legislation.

Conclusions

The fragmentation of the imperial system into successor kingdoms and the eventual establishment of Merovingian hegemony over Gaul set in place specific conditions which help to explain why canons acquired formal legal characteristics. The first and arguably most important condition was the ideological compact established between the Merovingian dynasty and Catholic episcopate. Merovingian rulers after Clovis had an incentive to sponsor new ecclesiastical legislation, to take an interest in upholding or reforming standards of worship and ecclesiastical governance, the subject matter of canon law, and to invest wealth in religious institutions. Without this ideological compact, conciliar activity and the generation of new canon law would not have occurred on the scale which it did. This compact was not guaranteed, and had Clovis converted to Arianism there might never have been sufficient incentive for kings to sponsor legislative councils amongst the Catholic episcopate.

The fact that this shared ideological framework overlaid a shifting configuration of competing kingdoms helps to explain why 'canon law' became such a highly charged store of *auctoritas* in Merovingian Gaul. A multiplicity of royal courts, sometimes using councils to compete with one another politically, led to higher numbers of councils, the mechanism for producing canon law, and the forum in which it was applied. Upholding '*lex Dei*' was a project amorphous enough that several kings could unite behind it at joint councils. Since more than one king was often present in Gaul at the same time, the authority to author new canonical legislation remained (largely) with the bishops. Individual kings had to work around canonical prescriptions. The key difference with the 'imperial system' was that over the course of the fifth century in Gaul canons had gradually come to define key legal privileges and the episcopate's place in society more broadly. A singularly powerful king like Chlothar II might be able to amend narrow points of ecclesiastical legislation, but the broader expectation

of who could legislate legitimately on matters of organised religion had shifted in the bishops' favour.

Simultaneously, quiet and ongoing economic and social trends turned 'canon law' into a normative system of fundamental importance to Gallic society as a whole. The steady expansion of 'church wealth' meant that large swathes of canon law touched upon the laity in new ways. Canons became relevant to rich nobles who wished to set up a new church or oratory on their estate, or who wished to donate lands to an episcopal church. They were also relevant to the *servi* or *coloni* whose lands were donated to a church and who found themselves under the *patrocinium* of the bishop. Canons also defined key mechanisms for entering the expanding class of permanent freedmen and sanctioned episcopal protection for this entire group.

The presence of 'new' 'Frankish' (and other) legal customs for settling disputes and transferring property, in addition to the presence of new types of public official in northern Gaul, seem to have increased the utility of episcopal intercession. By the 570s at the latest, everyone from peasants to kings demanded justice from bishops. Episcopal intercession was no longer extraordinary, it was a fundamental component of temporal justice. Effectively, a new, post-imperial form of 'public authority' emerged in Gaul, one dependent upon church councils and 'canon law'. It was inherently flexible, acting both as a buttress for monarchical authority but also as a decentralised, multi-polar or collegiate enterprise, capable of functioning (for a limited time at least) in the absence of direct royal support. Its boundaries were porous and adaptable. Kings and elite families could influence episcopal appointments and found their own religious institutions, while on the other hand bishops themselves were keen to solicit royal legislation and to co-opt 'hard' royal or comital power.

There appears to have been a spike in conciliar activity towards the end of the sixth century, and some of the most striking 'ecclesiastical legislation' was produced at roughly the same time. However, there was not an uninterrupted, unidirectional progression from a 'strong' to a 'weak' state, or of a shift in public power to private hands. Debates concerning the 'institutional' balance of power/authority between king and episcopate have obscured the emergence of

'canon law' as a normative system for society as a whole, which was itself both a by-product of, and a solution to the intermittent tension between kings and bishops in post-imperial Gaul.[984]

All this is to say that there is an important 'institutional perspective' which needs to be reintegrated with accounts that explain changes in the normative legislation in predominantly cultural or ideological terms,[985] or which subordinate legislation to analysis of political contingency, episcopal charisma or royal policy.[986] The deleterious effects of civil war and plague might have 'radicalized' the Merovingian legislative agenda, and maximalist articulations of ecclesiastical legal privilege could have been inspired by parallel developments in East Roman legislation.[987] However, the institutional dynamic outlined above, i.e. the political, legal and social role played by bishops, councils and their canons in fifth- and sixth-century Gaul, is also helpful for explaining the production and application of this legislation.

The headline conclusion of this dissertation is that the content and form of Gallic conciliar canons changed over the course of the sixth century because the 'function' of the legislation changed. Whereas *canones* c. 400 primarily dealt ecclesiastical ritual, discipline and hierarchy (and only limited points of lay interaction with Christian cult), by the final quarter of the sixth century they had become both tools of government and legal instruments capable of being applied for a range of practical purposes. 'Canon law' provides an example of a genre of normative legislation which changed over time as a result of underlying institutional and social factors. It was perhaps the only genre of normative legislation in post-imperial Gaul for which enough interlinked, corroborative evidence survives for us to draw such a conclusion with relative confidence.

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[984] See, for example, the concluding remarks of Hauck, *Kirchengeschichte*, I. 166-167, who was interested in measuring relative power and authority of royal and ecclesiastical leadership.
[985] Wood 'Gibichung'.
[986] See, Halfond, 'Sis Quoque', 49, and his approach to contrasting ecclesiastical relations with Chilperic and Guntram.
[987] 'Radicalization' e.g. Heinzelmann, *Gregory*, 185; Ubl, *Inzestverbot*, 166; Esders, *Römische Rechtstradition*, 210. // Eastern legislation Esders, cites Nissl who in turn drew heavily from Brunner et al.

Conclusions

In the final decades of the sixth century contemporaries paid close attention to the content of 'canon law'. They put considerable resources into generating new conciliar legislation in large-scale councils like those of Macon 585 and Paris 614, and also into reorganizing it to make it 'user-friendly', as with the *Collectio Vetus Gallica*. Kings, bishops, nuns and counts cited conciliar legislation, and sometimes doing so was enough to tip the outcome of serious and violent disputes in their favour. The idea that upholding '*canones'* was fundamental to the immediate safety and security of the realm permeated into all areas of political and social life in Gaul. Kings structured their endowments and conducted foreign policy in deference to this idea. Large portions of the composite, 'Frankish' nobility likewise placed their most valuable assets, their lands and family members, under the nominal authority of conciliar legislation. The extent of this activity and the role that canons played within it would almost certainly have surprised bishops such as Augustine or Ambrose, for whom imperial law facilitated (or dictated) most practical requirements, even if the underlying ideas and language might have seemed familiar.

While this dissertation has highlighted a broad 'direction of travel', in which form and usage of canonical legislation became more sophisticated over time, it has also consistently sought to stress the peculiarities of each context. Things did not move uniformly in one direction. During the sixth century in particular, the alternating periods of weak and strong Merovingian rulers affected whether or not individuals would seek to uphold 'canon law' as part of their strategies for conducting politics or (mis-)appropriating wealth. The remarkable legislative output of the period 585-614 was facilitated by fortuitous dynastic politics, which concentrated power in the hands of Guntram, Childebert II and then Chlothar II.

I argued that this 'change' in canon law was, in part, a product of and response to the disintegration of the imperial system. While provincial episcopal councils represent a point of institutional and cultural continuity for the period between c. 400 and c. 600, their position within the broader social and legal culture of Gaul was radically transformed by the 'end' of certain aspects of the Western Empire. At the start of the period, provincial church

councils were merely 'junior' fora, operating in conjunction with the legislative mechanisms and appellate courts of Empire. Contentious disputes or questions of how to 'apply' existing legislation to the complexity of real-life situations were often referred to a 'senior' authority, whether ecumenical council, pope, imperial magistrate or emperor. Provincial councils certainly 'legislated' (especially in places like North Africa) but the decisions or norms generated by local bishops could be 'trumped' by a launching an appeal '*trans mare*' to the emperor or pope. This dynamic was never entirely lost in sixth-century Gaul. The pope remained a respected authority on points of doctrine and to a lesser extent ecclesiastical discipline, and it is possible that bishops and kings took inspiration from sixth-century Eastern Imperial legislation in the process of formulating their own norms.

Under the functioning empire, the Christian community was defined (for most practical purposes) by imperial law, and the authority of the bishop was implicitly underwritten by the coercive power of the state. Ultimately, Gallic bishops sought to re-establish a version of this relationship in the latter part of the sixth century with Merovingian kings. However, in the intervening period, the chaotic fifth century and the first-generation of 'Arian' successor kingdoms, bishops had claimed a greater role in interpreting and generating new canonical norms. This 'expanded' legislative and judicial role was then accepted as the starting point by successive Frankish kings seeking to co-opt the episcopate into their regimes. This model is not dissimilar to those proposed previously by Hannig and Heinzelmann, who focussed upon the role of councils and individual bishops respectively in the ending of the imperial system. However, where this dissertation adds value is in acknowledging the transformative effect the process had upon both canonical legislation and 'canon law' as a dynamic system.

A natural way to develop the arguments proposed here would be to compare more systematically the development and function of '*canones*' in Gaul with those of neighbouring regions or later periods. Sixth-century Gaul effectively produced early examples of a 'new', post-imperial model for law-making and governance, analogues of which can also be found in Visigothic,

Carolingian and Anglo-Saxon kingdoms. At its most basic, the 'model' included bishops and kings ruling in a flexible and unequal partnership with some degree of legislative and organisational autonomy attributed to the episcopate, which was articulated via its canonical norms. Bishops, councils and canons are found in most contexts in early-medieval Europe (of the former Roman Empire at least). Given this near ubiquity, and since both canon law and church councils tended to adapt themselves to the underlying social and legal structures of their societies, highlighting points of continuity and difference in the content, form and application of canon law can provide a method for comparing the underlying institutional or legal conditions in different contexts.

Perhaps the most obvious comparison to be made, would be with the canon law produced in the Eastern Empire from the sixth century onwards. A large part of the process of transformation outlined in this dissertation involved church councils and canon law appropriating functions previously performed by imperial legislation. These conclusions could be tested by contrasting how canon law developed in an environment where emperors still generated 'secular' imperial legislation, which might perhaps explain why Byzantine canon law retained a 'curiously rhetorical' and 'literary texture' in comparison with Latin canons.[988] Conversely, parallel developments between the two spheres, such as the expansion of episcopal legal functions, might serve as a useful check on the arguments made here about canon law adapting to the specific legal conditions of sixth-century Gaul.[989]

Across the West, certain commonalities persist. In Frankish, Anglo-Saxon and Visigothic contexts, for example, a strong monarchy seems to have been requisite for sustaining conciliar activity and perhaps also the production of substantial quantities of new canonical legislation. As was mentioned above, seventh-century Gaul saw a decline in conciliar activity as Merovingian royal power weakened. There was a period of inactivity from roughly the 660/70s to

[988] Wagschal, *Law*.
[989] M. T. G. Humphreys, *Law, Power, and Imperial Ideology in the Iconoclast Era, c.680 — 850*, (Oxford, 2015), 30 – 36.

the 740s.[990] Whilst compilations of canon law continued to be copied throughout the seventh and eighth centuries, relatively little new conciliar legislation was generated by the start of the eighth century.[991] Furthermore, In the absence of semi-regular, unifying councils, fora for articulating and applying clerical norms with the backing of royal power, bishoprics and religious foundations came to be dominated by local elites and episcopal corporate identity to be partially undermined. Some have perceived the emergence of regional 'episcopal republics', in which bishops perhaps functioned as quasi-autonomous rulers responsible for taxation, coinage and coordination of military force.[992] Likewise, local notables were able to extend their control over religious foundations to a greater extent.[993] The lines between episcopal and secular office began to blur.

Conversely, the return of a strong political power to Francia with the rise of the Pippinid dynasty facilitated further conciliar activity (from roughly the 740s onwards, reaching further heights under Charlemagne) and the production of new ecclesiastical legislation.[994] Across the Channel in Anglo-Saxon England, the period of Mercian supremacy c.780s – 825 saw (almost) annual church councils, frequently attended by kings, who were able to draw attendees from the subordinate kingdoms south of the Humber.[995] In Visigothic Spain, semi-regular councils were held at Toledo from 633 onwards, after Arian opposition to the new Catholic monarchy was subdued and Sisenand consolidated his grip

[990] Wallace-Hadrill, *Church*, 107; Halfond, *Archaeology*, 199.
[991] R. Reynolds, 'The Organisation, Law and Liturgy of the Western Church', *NCMH* II, 613 argues that this was true across the West; however, book production continued in Francia throughout the sixth to ninth centuries, McKitterick, 'Eighth-Century Foundations', ch.25 in *NCMH* II, 686.
[992] On the emergence of 'episcopal republics' in mid-seventh century Neustria and Burgundy, R. Kaiser, 'Königtum und Bischofsherrschaft im frühmittelalterlichen Neustrien', in F. Prinz (ed.) *Herrschaft und Kirche: Beiträge zur Entstehung und Wirkungsweise episkopaler und monasticher Organizationsformen* (Stuttgart, 1988), 83 – 108, at 94-96. The term is contentious, however. Ian Wood, 'Clermont' provides an alternative model for seventh-century episcopal power based on long-standing familial networks.
[993] S. Wood, *Proprietary Church* as above.
[994] Halfond, *Archaeology*, 192 and 211; P. Fouracre, 'Frankish Gaul to 814', in *NCMH* II, 85 – 109; McKitterick, *Church*, ch.1 on Charlemagne's conciliar activity and legislative output.
[995] Cubitt, *Church*, 205f. and p.41 on episcopal attendance.

on power.[996] From this point onwards, Visigothic councils explicitly issued canons to promote the strength of the king and the stability of the people.[997] In Toledo 647, leading bishops were even required to spend one month a year in the '*urbs regia*', suggesting a level of integration between monarchy and episcopate not seen before in the post-imperial West.[998]

Over the course of the fifth- and sixth-centuries, Gallic elites refined a set of overlapping ideals of governance, derived from Roman and biblical precedents, which were well-suited to the heterogeneous and shifting state structures of the early-medieval West. These included an identification of the political community as a *populus Dei* and the idea that kings and bishops legislated together in order 'to correct' the moral behaviour of the populus and mitigate Divine judgment.[999] Neither idea necessarily required an operational taxation system or extensive civilian elites versed in classical literature and jurisprudence in order to function. Whether in southern or northern Europe, a military leader who could bring more than a handful of bishops together with some regularity (ideally with affirmation from the pope and / or incorporating a prestigious episcopal city like Rome, Arles, Vienne or Toledo), and who could issue some kind of written law, could appropriate these ideals. It looks like there was a certain degree of conscious mimesis between ruling dynasties. The competing first-generation successor states started holding 'national councils' within decades of one another (as outlined in Chapter Two). Arguably, the Visigoths also 'opted-in' to this model when Reccared converted to Catholicism in 585.[1000] Likewise, strong links have been identified between Anglo-Saxon and

[996] Although Schäferdiek, *Kirche*, 192-243 saw the years leading up to Toledo 589 as the true nascence for the Visigothic '*Landeskirche'*.
[997] Collins, *Visigothic Spain*, 79-80.
[998] Ibid., 83.
[999] Isidore of Seville' entry on kings noted, 'He does not govern who does not correct' *Etymologies*, 9.iii.4 (*The Etymologies of Isidore of Seville,* S. Barney, W. Lewis, J. Beach and O. Berghof with the collaboration of M. Hall (Cambridge, 2006), 200); Wormald, *Making*; Cubitt, *Church*, 170 sees parallels in political thought as resulting from shared cultural heritage rather than conscious imitation 243.
[1000] Collins, *Visigothic Spain*, 66-68; C. Cubitt, 'The Lateran Council of 649 as an Ecumenical Council', in R. Price and M. Whitby eds. *Chalcedon in Context, Church Councils 400 - 700* (Liverpool, 2009; paperback 2011), 133 – 148, at 135 suggests Toledo 589 was held in imitation of Empire, like Charlemagne's Frankfurt 794; Heather,

Carolingian kingship, facilitated by clerics such as Boniface and Alcuin.[1001] The attendance of Kentish bishops at Paris 614, the point at which Merovingian royal authority fully matured, might also explain later commonalities between Anglo-Saxon and Frankish kingship.

The specific form of ideological legitimation evolved over time. Janet Nelson argued in an early paper that intensive conciliar activity within western kingdoms from the seventh century onwards often coincided with elevated claims of royal authority. She highlighted the ritual of royal anointing, which was adopted in the seventh-century Visigothic kingdom, ninth-century West Francia, early tenth-century East Francia and late tenth-century England, all after periods of intensive conciliar activity. [1002] Paradoxically, however, in addition to elevating the king in question, anointing ceremonies also implied that the kings depended in some sense upon the episcopal hierarchy (who did the anointing) for their legitimacy.[1003]

It was in early sixth-century Gaul that the practical consequences of this paradoxical symbiosis between royal and episcopal authority first started to manifest themselves. By co-opting bishops into their regimes, kings gained access to new powerful forms of ideological legitimation. However, by facilitating councils and new canon law they also encouraged bishops to define

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Restoration, 214 on the jostling Frankish, Gothic, Visigothic and Lombard imitations of imperial authority.

[1001] Although Cubitt, *Church*, 164-70 remained sceptical of the idea that parallels between the Legatine Council of 786 and the *Admonitio Generalis* arose from conscious imitation rather than a shared ideological heritage.

[1002] J. Nelson, 'National synods, kingship as office, and royal anointing: an early medieval syndrome', *Studies in Church History* 7 (1971), 41 - 59 reprinted in J. Nelson, *Politics as Ritual in Early Medieval Europe* (London, 1986), 239 – 257; n.b. she later tempered her arguments about the strength and influence of episcopal corporate identity, arguing that under Charlemagne at least, bishops are still best thought of as individuals rather than a coherent *ordo*, J. Nelson, 'Charlemagne'.

[1003] Although it should noted that Nelson recently tempered her 1977 article on episcopal councils by arguing that the episcopate under Charlemagne did not have a strong, cohesive corporate identity, J. Nelson, 'Charlemagne and the bishops', in R. Meens, D. van Espelo, B. van den Hoven van Genderen, J. Raaijmakers, I. van Renswoude and C. van Rhijn eds., *Religious Franks. Religion and Power in the Frankish Kingdoms: Studies in Honour of Mayke de Jong* (Manchester, 2016), 350 - 370.

social norms, episcopal office and the nature of legitimate public authority.[1004] The episcopal 'strike action' against Sigismund in the Burgundian Kingdom at Lyon 518 was an early example of this legitimation strategy leading to strengthened social norms, which subsequently enmeshed a key royal supporter. An alternative iteration were those episcopal tribunals from the last quarter of the sixth century which ended up attempting to excommunicate the very kings and officials who summoned them. Later periods produced further striking examples. For example, at the Anglo-Saxon Legatine Council of 786, bishops went as far as attempting to define good government in canons addressed to '*reges et principes*'.[1005] Perhaps the ultimate example was Lothar II's inability to divorce Theutberga in the 850s and 860s, in which a combination of 'dangerously divided' Frankish kingdoms and a strong canon-law culture stymied the King.[1006]

Ideological commonalities should not obscure the fact that there were substantive differences in the production, content and function of canon law between the different kingdoms, and that these could be used to illuminate institutional or legal peculiarities of different regions. For example, in the Anglo-Saxon kingdoms, relatively little conciliar legislation was produced (at least in comparison with sixth-century Gaul). Only five legislative councils are attested from the seventh to ninth centuries.[1007] However, Anglo-Saxon councils during the Mercian Supremacy engaged heavily in dispute resolution and the affirmation of property rights.[1008] Seventh-century Visigothic councils, on the other hand, generated an extensive legislative tradition quite quickly.[1009] They

[1004] Cubitt, *Church*, and 195 and 242 highlights the importance of councils in safeguarding ecclesiastical privileges and fostering cohesion.
[1005] Cubitt, *Church*, 166; Cubit also highlights synods as fora for 'mitigating royal severity' (p.230).
[1006] D. D'Avray, *Papacy, Monarchy and Marriage 860 - 1600* (Cambridge, 2015), 48 – 66; Ubl, *Inzestverbot*, 345-52; S. Airlie, 'Private Bodies and the Body Politic in the Divorce Case of Lothar II', *Past and Present* 161 (1998), pp. 3 - 38.
[1007] Cubitt, *Church*, 62 and at 244 stresses that the relative paucity of Anglo-Saxon sources of canon law must not be interpreted as intellectual poverty; Elliot, 'Evidence', surveys the relative paucity of canonical legislation and compilation in pre-Conquest England more broadly, but argues that it has been undervalued.
[1008] Cubitt, *Church*, 65-74.
[1009] *Collectio Hispana*, Kéry, 61.

were also notably willing to prescribe corporal punishment.[1010] Furthermore, Visigothic kings took a much more active role in the councils than in Gaul; they obtained ecclesiastical penalties against those who attempted to usurp royal power and canonical regulation on the succession of kings.[1011]

Whilst there are significant continuities between the Merovingian and Carolingian legal systems, several 'institutional' or 'socio-legal' factors outlined above in relation to the sixth century were inverted in the ninth. Not only were the late eighth and ninth centuries often dominated by singularly powerful kings who took a much more active role in shaping and enforcing ecclesiastical legislation, but from 774 the pope was reincorporated into the Carolingian orbit. Whereas Merovingian compilation traditions were resolutely local and idiosyncratic (notwithstanding the success of the *Vetus Gallica*), not only did Charlemagne actively promulgate sections of the *Dionysio-Hadriana*, he and his successors also directed *missi* and bishops to distribute and enforce canonical statutes.[1012]

Then there is the scale and intensity of Carolingian canon law. Of the 72 pre-ninth century manuscripts and fragments containing Latin canon law only, 13 date from the seventh or sixth centuries.[1013] The unprecedented size and sophistication of the *Pseudo-Isidorian* forgeries perhaps suggest that canon law carried a weight in the mid-ninth century which it had not previously possessed. They certainly make Chilperic's (potentially) doctored Apostolic Canon look relatively minor by comparison.[1014] Finally, while the Merovingian compilers in the late sixth century were just getting to grips with the extensive Greek conciliar material, Carolingian compilers drew on a much wider range of normative genres, including rules lifted directly from the Old and New Testaments and penitential handbooks.[1015]

[1010] Hinschius IV, 804, e.g. flagellation for non-Christians, decalvation for sodomites.
[1011] Collins, *Visigothic Spain*, 72.
[1012] Ubl, *Inzestverbot*, 251-91 and 373-84 the greater evidence for attempts to implement the incest prohibition, even if the effectiveness of policies was debatable.
[1013] McKitterick, 'Knowledge', 97.
[1014] Jasper and Fuhrmann, *Papal Letters*, 135-97.
[1015] Cubitt, *Church*, 160-61.

The broader point is that the transition from imperial to post-imperial canon law in Gaul outlined in this dissertation was by no means definitive as a period of change for western canon law. Further detailed analysis of canon law as a dynamic system in other early-medieval contexts, which approached the local legislation on its own terms, yet with an understanding of its connection with the broader legislative tradition, could yield interesting results.

Appendix one: sixth-century Gallic councils

They key editions for fifth and sixth-century Gallic councils are

- *Concilia Aevi Merovingici I (511 - 695)*, Monumenta Germaniae Historica, ed. F. Maaßen, (Hanover, 1893);
- *Corpus Christianorum, Series Latina*, 148, *Concilia Galliae a. 314-506,* ed. C. Munier (Turnholt, Brepols, 1963);
- *Corpus Christianorum, Series Latina*, 148a, *Concilia Galliae a. 511-695,* ed. C. De Clercq (Turnholt, Brepols, 1963);
- *Les Canons de conciles merovingians*, 2 vols. Ed. J. Gaudemet and B. Basdevant (Paris, 1989).

More recently, Odette Pontal and Gregory Halfond have compiled lists of 'known' Gallic councils for the Merovingian era, which include those attested beyond the legislative sources (i.e., primarily, in letters and narrative histories of Gregory of Tours and Fredegar). No two scholars produce the same number of councils, however. Halfond's two appendices of accepted and dubious councils are the most comprehensive. However, some of his editorial choices are highly questionable. For example, Halfond was happy to record an unknown council as taking place in 588 on the basis that Act 20 of Macon 585 resolved to hold regular triennial councils from then on. These are insufficient grounds for recording a council: there is no corroborative evidence that such a council was held, and councils in all ages resolved to convene regularly. Conversely, Halfond missed certain other councils, like that held at Orleans in 585 as a prelude for Macon 585 in which Bishops Bertram and Palladius were humiliated for their role in the rebellion of Gundovald.[1016] N.B. The data for figure 2, Subscriptions by Decade are taken from Gaudemet and Basdevant, who follow Maaßen.

* Indicates the council is not recorded in J. Gaudemet and B. Basdevant (eds.), *Les Canons de Conciles Merovingians*, 2 vols. (Paris, 1989).
** Indicates the council is not included in either G.I. Halfond, *The Archaeology of Frankish Church Councils, AD 511 − 768*, (Leiden, 2010) or J. Gaudemet and B. Basdevant (eds.), *Les Canons de Conciles Merovingians*, 2 vols. (Paris, 1989).

Council	**Year**	**Edition/Source**
Orleans I	511	Non-contentious
*Lyons	c.516	Avitus of Vienne, ep.13
Epaon	517	Non-contentious
Lyon I	518/23	Non-contentious
Arles IV	524	Non-contentious
Carpentras	527	Non-contentious
*Valence	c.528	Vita Caesari Episcopi Arelatensis, I.60

[1016] Gregory, *LH* 8.7, p.439.

Orange II	529	Non-contentious
Vaison II	529	Non-contentious
Orleans II	533	Non-contentious
*Marseilles	533	Non-contentious
Clermont	535	Non-contentious
Orleans III	538	Non-contentious
Orleans IV	541	Non-contentious
Orleans V	549	Non-contentious
*Toul	550	Mappinus of Rheims (*Epistulae Austrasicae*, no.11)
*Metz	550/5	LH 4.6-7
Eauze	551	Non-contentious
*Paris	551/2	LH 4.6-7.
*Brittany	c.552	LH 4.4
Arles V	554	Non-contentious
Paris III	556/73	Non-contentious
*Saintes	558/61	Vita Sanctae Radegundis Liber II, ch.5
*Saintes	561/7	LH 4.26
Tours II	567	Non-contentious
Lyon II	567/70	Non-contentious
Paris	573	Non-contentious
*Paris	577	LH 5.18, 7.16
*Saintes	579	LH 5.36
*Chalon-sur-Saone	579	LH 5.27
*Berny	580	LH 5.49
*Lyons	581	LH 6.1
Macon I	581/3	Non-contentious
Lyons III	583	Non-contentious
*Valence	583/5	Fredegar Chronica IV.1 (disputed)
*Auvergne	584/91	LH 6.38-9
**Unknown	584	Fredegar Chronica 4.1
*Troyes	585	LH 8.13
** Ardennes	585	LH 8.20
** Orleans	585	LH 8.1-8
Macon II	585	Non-contentious
Auxerre	585/605	Non-contentious
*Unknown	588	LH 9.20
*Sorcy	589	LH 9.37
*Unknown	589	LH 9.32
*Unknown2	589	LH 9.41
*Poitiers	589/90	LH 9.39; 10.15
*Auvergne	590	LH 10.8
*Verdun/Metz	590	LH 10.19-20
*Chalon-sur-Saone	602/4	Non-contentious
Paris V	614	Non-contentious
Clichy	626/7	Non-contentious
*Macon	627/7	Vita Eusthasi Abbatis Luxouiensis, ch.9
*Bourges	630/43	Ep. Desiderii ep.II.16
*Clichy	636	Fredegar, Chronica 4.78; Vita Agilii Abbatis Resbacensis ch.5
*Orleans	639/41	Vita Eligii Episcopis Noviomensis, I.35
*Bourges	643	Letters of Desiderius ep.II.17
Chalon	647/53	Non-contentious
*Arles	648/60	Letter of the Synod to Theodorus of Arles (CCSL 148A, 309-10)
*Paris	653	Die Urkunden der Merowinger, no.85 (Clovis II)
*Clichy	654	Die Urkunden der Merowinger, no.85 (Clovis II)
Nantes	655/8	Non-contentious
Bordeaux	662/75	Non-contentious
Autun	662/76	Non-contentious
Losne	673/75	Non-contentious
Malay-le-Roi	677	Non-contentious
*Unknown	689	Annales Mettenses Priores, entry for 692

*Auxerre	692/96	Gesta Episcoporum Autissiodorensium, ch.24

Appendix two: references to Rome in fifth- and sixth-century Gallic conciliar *acta*

Council	**Roman Reference**	**References**
Unknown Location 441-445	Chelidonius' Appeal (Vita Hilarii)	CCSL 148, 105
Tours 461, c.1	Siricius to Himerius, JK 255 c.1; or possibly Innocent to Exusperius, JK 286 c.9; or to Victricius Rouen, c.9	CCSL, 148, 143
Agde 506, c. 9	Innocent I to Exusperius (JK 293) (Sexual continence of priests)	CCSL 148, 196
Epaon 517, Avitus and Praefatius' Prefatory letter	The popes have written to us regarding our negligence towards church councils	MGH Concil. I, 17.
Orange 529	Various: Introduction cites *capitula* received from the *sedes apostolica*; concerning Grace	MGH Concil. I, 46.
Vaison 529, c.3, 4, 5	c. 3, *Kyrie Eleison* to be sung as in churches of Rome, Italy and the East; c.4, Name of the pope to be read aloud in all churches; c.5 additional line to the Gloria to distinguish it from Arian heresy, as has been added in Rome, the East and Africa.	MGH Concil. I., 57.
Ibid. Contumeliosus of Riez' subscription	*'Contumeliosus ita consensi in omnibus, ut, cum sanctus papa Urbis suam oblatam dederit, recitemus ante altarium Domini'*	MGH Concil. I, 57.
(Marseilles 533)	The council itself did not mention the pope; however its business, the deposition of Contumeliosus of Riez, was eventually settled by papal rescript). Concerning clerical marriage / property.	W. Klingshirn, *Caesarius of Arles, Life, Testament and Letters,* p. 102ff.
Clermont 535, c.12	As per the '*apostolicae constitutionis'* (identified by Maaßen as a synod of Rome under Siricius or Innocent c.9.11. Contra clerical marriage	MGH Concil. I, 68.
Orleans 538, c.3	*sicut decreta sedis apostolicae continent* (unidentified). Metropolitans to be chosen by comprovincial bishops but with the consent of the clergy	MGH Concil. I, 74.
Ibid. c. 26	*Iuxta statute sedis apostolicae* (Leo I to bishops of Campania JW 402). Bishops are not to ordain slaves or coloni	MGH Concil. I, 81.
Orleans 541, c.1	Bishops are to refer to the bishop of Rome when	MGH Concil. I, 87.

	uncertainty arises. Concerning the date of Easter	
Orleans 549, c.1	These heresies were condemned by the bishops in the same manner as had the *sedes apostolica*. Contra Eutychian and Nestorian heresies	MGH Concil. I, 101.
Tours 567, c.20 - 22	Innocent I to Victricius or Rouen (JW 286). Concerning Ecclesiastics consorting with their wives.	Maaßen, *Quellen I,* 242; MGH Concil. I, 128. Mathisen, 'Church Councils and Local Authority', 177ff;

Appendix three: Gallic conciliar subscriptions

I have relied upon J. Gaudemet and B. Basdevant (eds.), *Les Canons de Conciles Merovingians*, 2 vols. (Paris, 1989), since they identified the modern French locations. For Agde 506, Schäferdiek, *Kirche*, 243-61; Munier, CCSL 148, 213-19.

Agde 506

Rank	City	Name	Rank of Delegate
1	Arles	Caesarius	Metropolitan
2	Bordeaux	Cyprianus	Metropolitan
3	Eauze	Clarus	Metropolitan
4	Bourges	Tetradius	Metropolitan
5	Toulouse	Heraclianus	Bishop
6	Agde	Sofronius	Bishop
7	Nîmes	Sedatus	Bishop
8	Rodez	Quintianus	Bishop
9	Albi	Sabinus	Bishop
10	Cahors	Boetius	Bishop
11	Dax	Gratianus	Bishop
12	Auch	Nicetius	Bishop
13	St Bertrand	Convenica	Bishop
14	Lescar	Galactorius	Bishop
15	Oloron	Gratus	Bishop
16	Lectoure	Vigilius	Bishop
17	St Lizier	Consoranis	Bishop
18	'*de palatio*'	Petrus	Bishop
19	Perigueux	Cronopius	Bishop

20	Uzes	Probatius	
21	Lodève	Maternus	Bishop
22	Sénez	Marcellus	Bishop
23	Antibes	Agricius	Bishop
24	Digne	Pentadius	Bishop
25	Narbonne	Avilius	Presbyter
26	Fréjus	Johannes	Presbyter
27	Bigorre-de-Bagnères	Ingenuus	Presbyter
28	Clermont-Ferrand	Paulinus	Presbyter
29	Avignon	Pompeius	Presbyter
30	Bazas	Polemius	Presbyter
31	Aire-sur-l'Adour	Petrus	Presbyter
32	?	Firminus	Presbyter

Orleans 511

Rank	City	Name	Rank of Delegate
1	Bordeaux	Cyprianus	Metropolitan
2	Bourges	Tytradius	Metropolitan
3	Tours	Licinius	Metropolitan
4	Rouen	Geldaredus	Metropolitan
5	Arverna	Eufrasius	Metropolitan
6	Troyes	Camillianus	Metropolitan
7	Paris	Hyraclius	Metropolitan
8	Rodez	Quintianus	Metropolitan
9	Saintes	Petrus	Metropolitan
10	Cahors	Boetius	Bishop
11	Perigueux	Cronopius	Bishop
12	Auch	Nicetius	Bishop
13	Eauze	Leontius	Bishop
14	Bazas	Sextilius	Bishop
15	Retz	Adelfius	Bishop
16	Angouleme	Lupicinus	Bishop
17	Mans	Principius	Bishop
18	Angers	Eustochius	Bishop
19	Nantes	Epyfanius	Bishop
20	Rennes	Melanius	Bishop
21	Orleans	Eusebius	Bishop
22	Vannes	Modestus	Bishop
23	Oxoma (?)	Litardus	Bishop
24	Soissons	Lupus	Bishop
25	Avranches	Nepus	Bishop
26	Amiens	Edebius	Bishop
27	Vermandois	Suffronius	Bishop
28	Senlis	Libanius	Bishop
29	Coutances	Leontianus	Bishop
30	Evreux	Maurusus	Bishop
31	Auxerre	Teudosius	Bishop
32	Chartres	Aventius	Bishop

Epaon 517

Ranking	City	Office
1	Epaon	Metropolitan
2	Chalon	Metropolitan
3	Vaison	Metropolitan
4	Valence	Bishop
5	Sisteron	Bishop
6	Grenoble	Bishop
7	Besancon	Bishop
8	Langres	Bishop
9	Autun	Bishop
10	Octodurum	Bishop
11	Embrun	Bishop
12	Tarentaise	Bishop
13	Geneva	Bishop
14	Windisch	Bishop
15	Die	Bishop
16	Carpentras	Bishop
17	Gap	Bishop
18	Orange	Bishop
19	Saint-Paul-Trois-Chateaux	Bishop
20	Cavaillon	Bishop
21	Viviers	Bishop
22	Apt	Bishop
23	Nevers	Bishop
24	Salutaris	Delegate

Orleans 533

Ranking	City	Name	Office of Delegate
1	Bourges	Honoratus	Bishop
2	Orleans	Leontius	Bishop
3	Eauze	Aspasois	Bishop
4	Auxerre	Eleutherius	Bishop
5	?	Inportunus	Bishop
6	Perigueux	Chronopius	Bishop
7	Tours	Iniuriosus	Bishop
8	Angouleme	Lupicinus	Bishop
9	Rouen	Elafius	Bishop
10	Autun	Agripinus	Bishop
11	Chartres	Etherius	Bishop
12	Nantes	Eumerius	Bishop
13	?	Calistius	Bishop
14	Paris	Emelius	Bishop
15	?	Marcus	Bishop
16	Cahors	Sustracinus	Bishop
17	Avranches	Perpetuus	Bishop
18	Saintes	Eusebius	Bishop
19	Comminges	Presidius	Bishop
20	Seez	Passiuus	Bishop
21	Auch	Proclianus	Bishop
22	?	Clarentius	Bishop
23	Vienne	Iulianus	Bishop
24	Mans	Innocentius	Bishop
25	Aire (?)	Marcellus	Bishop

26	Coutances	Lauto	Bishop
27	Sens	Orbatus	Junior Clergy
28	Leon	Asclipius	Junior Clergy
29	Poitiers	Laurentius	Junior Clergy
30	Clermont	Eledius	Junior Clergy
31	-	Prosedonius	Junior Clergy

Orleans 541

Ranking	City	Name of Delegate	Office of Delegate
1	Bordeaux	Leontius	Bishop
2	Eauze	Aspasius	Bishop
3	Rouen	Flauius	Bishop
4	Tours	Iniuriosus	Bishop
5	Narbonnaise	Maximus	Bishop
6	Toulon	Cyprianus	Bishop
7	Limoges	Ruricius	Bishop
8	Apt	Praetextatus	Bishop
9	Macon	Placidus	Bishop
10	Embrun	Gallicanus	Bishop
11	Antibes	Eucherius	Bishop
12	Chartres	Aeterius	Bishop
13	Octodurum(?)	Rufus	Bishop
14	Vaison	Alethius	Bishop
15	Saint-Paul-Trois-Chateaux	Heraclius	Bishop
16	Rodez	Dalmatius	Bishop
17	Arverna	Gallus	Bishop
18	Orange	Vindimialis	Bishop
19	Javols	Euantius	Bishop
20	Chalon	Agricula	Bishop
21	Uzes	Firminus	Bishop
22	Poitiers	Danihel	Bishop
23	Windisch	Grammatius	Bishop
24	Sisteron	Aduolus	Bishop
25	Bigorre	Iulianus	Bishop
26	Seez	Passiuus	Bishop
27	Mans	Innocentius	Pecheur (Bishop after a siege?)
28		Viuentius	Bishop
29	Auxerre	Eleutherius	Bishop
30	Vence	Deutherius	Bishop
31	Senez	Symplicius	Bishop
32	Auch	Proculianus	Bishop
33	Nevers	Rusticius	Bishop
34	Carpentras	Clematius	Bishop
35	Nantes	Eumerius	Bishop
36	Evreux	Licinius	Bishop
37	Angers	Albinus	Bishop
38	Gap	Vellesius	Bishop
39	Dax	Carterius	Bishop
40	Avignon	Antonius	Bishop
41	Die	Lucritius	Bishop
42	Orleans	Marcus	Junior Clergy

43	Bourges	Probianus	Junior Clergy
44	Paris		Junior Clergy
45	Geneve		Junior Clergy
46	Saintes		Junior Clergy
47	Angouleme		Junior Clergy
48	Frejus		Junior Clergy
49	Glandeve		Junior Clergy
50	Cahors		Junior Clergy
51	Bayeux		Junior Clergy
52	Coutances		Junior Clergy
53	Avranches		Junior Clergy
54	Lisieux		Junior Clergy

Orleans 549

Ranking	City	Name of Delegate	Office
1	Lyons	Sacerdus	Bishop
2	Arles	Aurilianus	Bishop
3	Vienne	Esychius	Bishop
4	Treves	Nicecius	Bishop
5	Bourges	Desideratus	Bishop
6	Eauze	Aspasius	Bishop
7	Sens	Constitutus	Bishop
8	Macon	Placidus	Bishop
9	Uzes	Firminus	Bishop
10	Chalon	Agricula	Bishop
11	Besancon	Vrbicus	Bishop
12	Octodurum(?)	Rufus	Bishop
13	Arverna(?)	Gallus	Bishop
14	Paris	Saffaracus	Bishop
15	Tongres	Domitianus	Bishop
16	Auxerre	Eleutherius	Bishop
17	Verdun	Desideratus	Bishop
18	Windisch	Grammatius	Bishop
19	Langres	Tetricus	Bishop
20	Autun	Nectarius	Bishop
21	Saintes	Eusebius	Bishop
22	Auch	Proculianus	Bishop
23	Cahors	Maximus	Bishop
24	Agen	Bebianus	Bishop
25	Angouleme	Abthonius	Bishop
26	Vence	Deuterius	Bishop
27	Coutances	Lauto	Bishop
28	Seez	Passiuus	Bishop
29	Carpentras	Clematius	Bishop
30	Gap	Vellesius	Bishop
31	Nevers	Aregius	Bishop
32	Digne	Hilarius	Bishop
33	Apt	Clementius	Bishop
34	Toulon	Palladius	Bishop
35	Glandeve	Basilius	Bishop
36	Aix	Auolus	Bishop

37	Rennes	Fybidiolus	Bishop
38	Valence	Gallus	Bishop
39	Chartres	Leubenus	Bishop
40	Lisieux	Theodobaudis	Bishop
41	Toul	Alodius	Bishop
42	Evreux	Licinius	Bishop
43	Meaux	Medoueus	Bishop
44	Dax	Liberius	Bishop
45	Comminges	Amelius	Bishop
46	Lectoure	Alecius	Bishop
47	Senlis	Gonotiernus	Bishop
48	Avranches	Egidius	Bishop
49	Amiens	Beatus	Bishop
50	Troyes	Ambrosius	Bishop
51	Avignon	Marinus	Delegate
52	Nice	Aetius	Delegate
53	Alba	Cautinus	Delegate
54	Die	Vincentius	Delegate
55	Geneve	Tranquillus	Delegate
56	Bayeux	Theudorus	Delegate
57	Riez	Claudianus	Delegate
58	Frejus	Epyfanius	Delegate
59	Antibes	September	Delegate
60	Cavaillon	Optatus	Delegate
61	Orange	Petrus	Delegate
62	Embrun	Probus	Delegate
63	Tournai	Vitalis	Delegate
64	Leonce	Vincentius	Delegate
65	Sisteron	Agecius	Delegate
66	Limoges	Bantardus	Delegate
67	Albi	Viuentius	Delegate
68	Couserans	Eleutherius	Delegate
69	Reims	Protadius	Delegate
70	Laon	Medulfus	Delegate
71	Angers	Sapaudus	Delegate

Macon 585

Ranking	City	Name	Office of Delegate
1	Lyon	Priscus	Metropolitan
2	Vienne	Euantius	Metropolitan
3	Rouen	Pretextatus	Metropolitan
4	Bordeaux	Bertechramnus	Metropolitan
5	Sens	Artemius	Metropolitan
6	Bourges	Sulpitius	Metropolitan
7	Autun	Siagrius	Bishop
8	Bazaz	Orestis	Bishop
9	Auch	Faustus	Bishop
10	Auxerre	Aunacharius	Bishop
11	Grenoble	Estitius	Bishop
12	Besancon	Siluester	Bishop
13	Marseille	Teudorus	Bishop
14	Limoges	Feriolus	Bishop
15	Saintes	Palladius	Bishop
16	Valence	Ragnoaldus	Bishop
17	Chartres	Pappolus	Bishop
18	Digne	Eraclius	Bishop
19	Macon	Eusebius	Bishop

20	Orleans	Namaticius	Bishop
21	Nevers	Agrecola	Bishop
22	Paris	Ragnebodus	Bishop
23	Langres	Mummolus	Bishop
24	Avenches	Marius	Bishop
25	Orange	Trapecius	Bishop
26	Chalon	Flauius	Bishop
27	Cavaillon	Veranus	Bishop
28	Agen	Antidius	Bishop
29	Perigueux	Carterius	Bishop
30	Aire	Risticus	Bishop
31	Bearn	Sauinus	Bishop
32	Comminges	Rufinus	Bishop
33	Angloueme	Nicasius	Bishop
34	Mans	Baudigisilus	Bishop
35	Geneve	Chariato	Bishop
36	Elaborensium	Lucerius	Bishop
37	Bigorre	Amelius	Bishop
38	Cahors	Vrsitinus	Bishop
39	Riez	Vrbicus	Bishop
40	Gap	Aridius	Bishop
41	Embrun	Emeritus	Bishop
42	Maurienne	Hiconius	Bishop
43	Glandeve	Agrecius	Bishop
44	Sisteron	Pologronius	Bishop
45	Tarentaise	Martianus	Bishop
46	Vaison	Artemius	Bishop
47	Carpentras	Boetius	Bishop
48	Apt	Pappus	Bishop
49	Saint-Paul-Trois-Chateaux	Eusebius	Bishop
50	Belley	Felix	Bishop
51	Troyes	Agrecius	Bishop
52	Arles	Saupaudus	Delegate of…
53	Antibes	Optatus	Delegate of…
54	Vence	Deuterus	Delegate of…
55	Toulon	Desiderius	Delegate of…
56	Aix	Pientus	Delegate of…
57	Die	Paulus	Delegate of…
58	Euze	Laban	Delegate of…
59	Toulouse	Magnulfus	Delegate of…
60	Nice	Catholinus	Delegate of…
61	Sion	Eliodore	Delegate of…
62	Avignon	Iohannis	Delegate of…
63	Senez	Vigile	Delegate of…
64	N/A	Frunimius	Bishop (without seat)
65	N/A	Promotus	Bishop (without seat)
66	N/A	Fautianus	Bishop (without seat)

Paris 614

Ranking	City	Name	Office of Delegate
1	Lyon	Aridius	Bishop
2	Arles	Florianus	Bishop
3	Vienne	Domulus	Bishop
4	Rouen	Hildulfus	Bishop
5	Treves	Sabaudus	Bishop
6	Besancon	Proardus	Bishop

7	Cologne	Solacius	Bishop
8	Bourges	Austrigisilus	Bishop
9	Bodeaux	Arnegisilus	Bishop
10	Sens	Lupus	Bishop
11	Reims	Sunnacius	Bishop
12	Eauze	Leodomundus	Bishop
13	Aire	Palladius	Bishop
14	Autun	Rocco	Bishop
15	Saintes	Audoberhtus	Bishop
16	Mans	Bertegramnus	Bishop
17	Angers	Magnobodus	Bishop
18	Poitiers	Ennoaldus	Bishop
19	Rennes	Haimoaldus	Bishop
20	Nantes	Eufronius	Bishop
21	Bayeux	Leodoaldus	Bishop
22	Avranches	Hildoaldus	Bishop
23	Bazas	Gudualdus	Bishop
24	Macon	Deutatus	Bishop
25	Orleans	Liudigisilus	Bishop
26	Albi	Fredemendus	Bishop
27	Auxerre	Disiderius	Bishop
28	Cahors	Eusepius	Bishop
29	Besancon	Protagius	Bishop
30	Chalon	Antestis	Bishop
31	Langres	Miechius	Bishop
32	Chartres	Theodoaldus	Bishop
33	Belley	Aquilenus	Bishop
34	Sisteron	Secundinus	Bishop
35	Toulouse	Hiltigisilus	Bishop
36	Valais	Leodomundus	Bishop
37	Cambrai	Gaugericus	Bishop
38	Grenoble	Suagrius	Bishop
39	Nevers	Raurecus	Bishop
40	Saint-Paul-Trois-Chateaux	Agricola	Bishop
41	Vaison	Vincentius	Bishop
42	Die	Maximus	Bishop
43	Embrun	Lopacharus	Bishop
44	Gap	Valatonius	Bishop
45	Venasque	Ambrosius	Bishop
46	Antibes	Eusepius	Bishop
47	Apt	Innocentius	Bishop
48	Lisieux	Chamnegisilus	Bishop
49	Meaux	Gundoaldus	Bishop
50	Rodez	Verus	Bishop
51	Laon	Rigobertus	Bishop
52	Lescar (?)	Victor	Bishop
53	Amiens	Berachundus	Bishop
54	Evreux	Erminulfus	Bishop
55	Lectoure (?)	Palladius	Bishop
56	Nice	Abraham	Bishop
57	Toul	Eudila	Bishop
58	Senez	Marcellus	Bishop
59	Noyon	Berhtmundus	Bishop
60	Worms	Berhtulfus	Bishop
61	Agen	Flauardus	Bishop
62	Javols	Agricula	Bishop
63	Lisieux	Launomundus	Bishop
64	Angloueme	Bassolus	Bishop
65	Maestricht	Bettulfus	Bishop

66	Sion	Dracoaldus	Bishop
67	Toulouse	Vuigillisilus	Bishop
68	Chalons	Leudomeris	Bishop
69	Verdun	Harimeris	Bishop
70	Soissons	Ansericus	Bishop
71	Saint-Pol-de-Leon	Marcellus	Bishop
72	Couserans	Iohannis	Bishop
73	Paris	Ceraunius	Bishop
74	Strasbourg	Ansoaldus	Bishop
75	Spire	Hildericus	Bishop
76	Perigueux	Aggus	Bishop
77	Oloron	Helarianus	Bishop
78	Rochester	Iustus	Bishop
79	Marseille	Peter	Bishop
80	Canterbury	Peter	Abbot

Bibliography

Primary Sources:

Imperial and Royal Laws

Lex Romana Visigothorum, ed. G. Hänel (Berlin/Leipzig, 1849).

Lex Salica: the Ten Texts with the Glosses and the Lex Emendata, ed. J. H. Hessels (London, 1880).

Lex Ribuaria et lex Francorum Chamavorum, ex Monumentis Germaniae Historicis recusae. Ed. R. Sohm (Hanover, 1883).

Monumenta Germaniae Historica, Legum II, *Capitularia Regum Francorum* I, A. Boretius ed., (Hannover, 1883).

Leges Burgundionum, MGH *Leges* I.2.1, L. R. de Salis, (Hanover, 1892).

Leges Visigothorum, MGH *Leges* 1.1, K. Zeumer, (Hanover/Leipzig, 1902).

T. Mommsen, P.M. Meyer (eds.), *Theodosiani libri XVI Cum Constitutionibus Sirmondianis et Leges Novellae ad Theodosianum Pertinentes, Adsumpto Apparatu* P. Krüger (3 vols.) (Berlin, 1905).

The Theodosian Code and Novels, and the Sirmondian Constitutions, trans. and ed. C. Pharr, in collaboration with T. Sherrer Davidson and M. Brown Pharr. With an introduction. by C. Dickerman Williams. (London, 1952).

K-A Eckhardt ed.,
— *Lex Salica: 100-Titel Text* (Germanenrecht n. S., Gottingen, 1953);
— *Pactus Legis Salicae*, II, 2, *Kapitularien und 70 Titel-Text* (Göttingen, 1956);
— *Pactus Legis Salicae MGH LL nat. Germ. IV, I* (Hannover, 1962).

*Lex Ribvaria, e*d. F. Beyerle and R. Buchner, MGH, Leges, III.2 (Hannover, 1954).

The Roman State and Christian Church, a Collection of Legal Documents to A.D. 535, 3 vols. P. R. Coleman-Norton (London, 1966)

The Burgundian Code: Book of Constitutions or Law of Gundobad, Additional Enactments, trans. and ed. K. Fischer Drew, Foreword by E. Peters (Philadelphia, 1972).

Laws of the Salian and Ripurian Franks, Trans. And ed. T. Rivers (New York, 1986).

The Laws of the Salian Franks, Trans. And ed. K. Fischer Drew (Philadelphia, 1991).

Church Norms

H. Bruns, *Canones Apostolorum et Conciliorum Veterum Selecti, Saeculorum IV. V. VI. VII.* (Berlin, 1839).

Geschichte der Quellen und der Literatur des Canonischen Rechts im Abendlande bis zum Ausgange des Mittelalters, F. Maassen, (Paris, 1870).

K. J. Hefele, *Conciliengeschichte*, (Freiburg im Breisgau, 1873-90); English translation: *A History of the Councils of the Church*, Trans. W. R. Clark, (Edinburgh 1883-96).

Concilia Aevi Merovingici I (511 - 695), Monumenta Germaniae Historica, ed. F. Maaßen, (Hanover, 1893).

Acta synhodorum habitarum Romae., Mommsen, ed. MGH *auctores antiquissimi* 12 (Berlin, 1894).

Didascalia et constitutiones apostolorum, ed. F. X. Funk, 2 vols. (Paderborn, 1905).

Didascalia Apostolorum, ed. and trans. R. H. Connolly (Oxford, 1929).

Histoire des collections canoniques en occident, depuis les Fausses Décrétales jusqu'au Décret de Gratien, Ed. P. Fournier and G. Le Bras (Paris, 1931).

Ph. Jaffé, *Regesta pontificum romanorum*, ed. secundam curaverunt S. Loewenfeld (JL: an.882 - 1198), F. Kaltenbrunner (JK: an.? - 590), P. Ewald (JE: an. 590 - 882). Leipzig 1885. Repr. Graz 1956.

Corpus Christianorum, Series Latina, 148, *Concilia Galliae a. 314-506,* ed. C. Munier (Turnholt, Brepols, 1963).

Corpus Christianorum, Series Latina, 148a, *Concilia Galliae a. 511-695,* ed. C. De Clercq (Turnholt, Brepols, 1963).

Les Canons de conciles merovingians, 2 vols. Ed. J. Gaudemet and B. Basdevant (Paris, 1989).

The Acts of the Council of Chalcedon. Translated with an introduction and notes by Richard Price and Michael Gaddis, 3 vols. (Liverpool, 2005) (= Price & Gaddis, *Chalcedon*).

The Acts of the Lateran Synod of 649, Translated Texts for Historians vol. 61, R. Price (trans.) with P. Booth and C. Cubitt, (Liverpool, 2014).

P. Jaffé, & N. Herbers, *et al.,* (2016) *Regesta Pontificum Romanorum ab condita ecclesia ad annum post Christum natum MCXCVIII),* 3rd edn, *I (a S. Petro usque ad A. DCIV)* (Göttingen).

Non-Legal Sources

Epistolae Merowingici et Karolini Aevi, ed. W. Gundlach, MGH, Epistolae 3. (Berlin, 1892).

Cassiodorus, Variae: I Theodericianae variae., ed. T. Mommsen, MGH auctores antiquissimi 12 (Berlin, 1894).

W. Anderson,
— *Sidonius, Poems and Letters Volume I, Poems Letters I - II,* (Cambridge MA, 1933, 1996);
— *Sidonius, Letters Volume II, Letters III - IX,* (Cambridge MA, 1965, 1997).

Gregorii Episcopi Turonensis Libri Historiarum X, MGH Scriptores Rerum Merowingicarum I.I B. Krusch and W. Levison (Hannover, 1937-51) (= Gregory LH Krusch/Levison).

The Life of Saint Epiphanius, G. Cook, (trans. & ed.) (Washington D.C., 1942).

Vitae Sanctorum Honorati Hilarii episcoporum Arelatensium, S. Cavallin, ed.

(Lund, 1952).

The Fourth Book of the Chronicle of Fredegar with its Continuations, trans. and ed. J.M. Wallace-Hadrill (London, 1960) (= Wallace-Hadrill, *Fredegar*).

The History of the Franks, Gregory of Tours, trans. and ed. L. Thorpe, (London, 1974) (= Gregory LH Thorpe).

M. Weidemann, *Das Testament des Bischofs Berthramn von Le Mans vom 27. März 616: Untersuchungen zu Besitz und Geschichte einer fränkischen Familie im 6. und 7. Jahrhundert* (Mainz, 1986) (= Wiedemann, *Berthramn*).

Christianity and Paganism 350 − 750: the conversion of Western Europe, ed. J.N. Hillgarth (Philadelphia, 1986).

The Fathers of the Church: St. Augustine Letters 1 - 29** trans. and ed. R. B. Eno (Washington, 1989).

Gregory of Tours: Life of the Fathers, E. James (trans. & ed.), *Translated Texts for Historians* Vol. 1, 2nd edition (Liverpool, 1986, 1991).

J. McNamara, J. Halborg and E. Gordon (trans. and ed.), *Sainted Women of the Dark Ages* (Durham and London, 1992).

Caesarius of Arles: Life, Testament and Letters, translated with an introduction by W. Klingshirn (Liverpool, 1994) (= Klingshirn, *Caesarius*).

Translated Texts for Historians Vol. 23, Venantius Fortunatus: Personal and Political Poems, trans. and ed. J. George (Liverpool, 1995) (= George, *Venantius*).

Ruricius of Limoges and friends : a collection of letters from Visigothic Gaul translated with introduction, R. W. Mathisen (Liverpool, 1999) (= Mathisen, *Ruricius*).

Ambrose, *De Officiis: Edited with an Introduction, Translation, and Commentary* 2 vols. I. Davidson (Oxford, 2001).

Politics, Philosophy, and Empire in the Fourth Century, Select Orations of Themistius, P. Heather and D. Moncur, trans. and ed. with an introduction, (Liverpool, 2001).

Avitus of Vienne, Letters and Selected Prose, translated with an introduction by D. Shanzer and I. Wood (Liverpool, 2002) (= Shanzer & Wood, *Avitus*).

The Letters of Gregory the Great, trans. with introduction and notes by J. R. C. Martyn (3 vols.) (Toronto, 2004).

The Works of St Augustine, a Translation for the 21st Century, Letters 211 - 270, 1 - 29* (Epistulae) II/4* trans. and notes by R. Teske (New York, NY, 2005) (= Teske, *Augustine*).

The Etymologies of Isidore of Seville, S. Barney, W. Lewis, J. Beach and O. Berghof with the collaboration of M. Hall (Cambridge, 2006).

Ambrose of Milan: Political Letters and Speeches, J. H. W. G. Liebeschuetz and C. Hill (eds.), (Liverpool, 2010).

Secondary Literature:

S. Airlie, 'Private Bodies and the Body Politic in the Divorce Case of Lothar II', *Past and Present* 161 (1998), pp. 3 - 38 (Airlie, 'Divorce').

P. Allen, 'The definition and enforcement of orthodoxy', ch. 27 in A. Cameron, B. Ward-Perkins and M. Whitby eds. *The Cambridge Ancient History vol. 14 Late Antiquity: Empire and Successors, AD 425 - 600*, 811 - 834.

D. Alt, '…ut sancto sanctus succederet… oder: Haben Heilige eine Wahl? Ein Ausblick auf die frühmittelalterliche Bischofserhebung in den Viten heiliger Bischöfe', in J. Leemans, P. Nuffelen, S. Keough and C. Nicolaye eds. *Episcopal Elections in Late Antiquity* (Berlin/Boston, 2011), 315 - 331.

P. Amory,
— 'Ethnic identity as a situational construct in the Early Middle Ages', *Mittelungen der anthropologischen Gesellschaft in Wien* 133 (1983), 15-26
— 'The meaning and purpose of ethnic terminology in the Burgundian laws' in *Early Medieval Europe* Vol.2 Issue.1 (1993) pp.1-28.

A. Angenendt, 'Kirche als Träger der Kontinuität', in *Vorträge und Forschungen: Von der Spätantike zum frühen Mittelalter: Kontinuitäten und Brüche, Konzeptionen und Befunde*, Vol. 79 (2009), 101 - 141 (= Angenendt, *Kirche*).

B. Bachrach, *Anatomy of a Little War: A Diplomatic and Military History of the Gundovald Affair, 568 - 586* (Boulder, 1994).

J. Banaji,
— Agrarian Change in Late Antiquity: Gold, Labour, and Aristocratic Dominance (Oxford, 2007);
— 'Aristocracies, Peasantries and the Framing of the Early Middle Ages', in Theory as History. Essays on Modes of Production and Exploitation (Leiden/Boston, 2010), 215 - 25;
— Theory as History. Essays on Modes of Production and Exploitation (Leiden/Boston, 2010).

A. Barbero, & M. Loring, 'The formation of the Sueve and Visigothic kingdoms in Spain' in P. Fouracre ed., *The New Cambridge Medieval History* (Cambridge, 2008), 162-192.

H. Barion, *Das fränkisch-deutsche Synodalrecht der Frühmittelalters* (Bonn, 1931) (= Barion, *Synodalrecht*).

T. D. Barnes, "The Crimes of Basil of Ancyra," *JTS* 47 (1996), pp. 553 – 54.

P. S. Barnwell, 'Emperors, jurists and kings: law and custom in the late Roman and early medieval West' *Past & Present* 168 (2000), 6-29.

S. Baxter, 'The Limits of the Anglo-Saxon State', in W. Pohl and V. Wieser (eds.) *Der frümittelalterliche Staat - europäische Perspektiven*, Forschung zur Geschichte des Mittelalters 17 (2009), 503 - 519.

H. Berman, *Law and Revolution: The formation of the Western legal tradition* (Cambridge, MA, 1983).

F. Beyerle, 'Das legislativ Werk Chilperics I', in ZRG, *Germ. Abt.*, 78 (1961).

N. Bikeeva, '*Serente diabulo:* The Revolts of the Nuns at Poitiers and Tours in the Late Sixth Century', in R. Kotecki and J. Maciejewski (eds.) *Ecclesia et Violentia, Violence Against the Church in the Middle Ages* (Newcastle, 2014) pp. 72 - 91 (= Bikeeva, 'Revolts').

D. A. Binchy, *Celtic and Anglo-Saxon Kingship*, (Oxford 1970).

U. Blumenthal, 'The Papacy 1024 – 1122' in D. Luscombe & J. Riley – Smith, *NCMH* IV, (Cambridge, 2004), 8 – 37.

G. Bowerstock, 'From Emperor to Bishop: The Self-Conscious Transformation of Political Power in the Fourth Century A.D.', *Classical Philology,* vol. 81, no. 4 (Oct, 1986), pp. 298 - 307.

K. Bowes, *Private Worship, Public Values, and Religious Change in Late Antiquity* (Cambridge, 2008) (= Bowes, *Private*).

W. Boyd, *The Ecclesiastical Edicts of the Theodosian Code, Studies in History, Economics and Public Law* 24, doctoral dissertation published 1905, (Clark, New Jersey, 2005) (= Boyd, *Edicts*).

P. F. Bradshaw, *The Search for the Origins and Christian Worship: Sources and Methods for the Study of Early Liturgy* (New York, 1992).

M. Brett and K.G. Gushing, *Readers, texts, and compilers in the earlier Middle Ages : studies in medieval canon law in honour of Linda Fowler-Magerl* (Aldershot, 2009).

P. Brown,
— *The Rise of Western Christendom* (Oxford, 1996, 2nd Ed. 2003) (= Brown, *Rise*);
— *Poverty and Leadership in the Later Roman Empire* (Hanover, New Hampshire, 2002) (= Brown, *Poverty*);
— *Through the Eye of a Needle: Wealth, the Fall of Rome, and the Making of Christianity in the West, 350 — 550 AD* (Princeton NJ, 2012) (= Brown, *Eye*);
— *The Ransom of the Soul, Afterlife and Wealth in Early Western Christianity* (Cambridge, 2015) (= Brown, Ransom).

J. A. Brundage,
— *Law, Sex, and Christian Society in Medieval Europe* (Chicago, 1987) (= Brundage, *Law*);
— *Medieval Canon Law* (London, 1995) (= Brundage, *Medieval*);
— *The Medieval Origins of the Legal Profession: Canonists, Civilians and Courts* (Chicago, 2008) (= Brundage, *Origins*).

H. Brunner, *Deutsche Rechtsgeschichte, 2nd ed.* (Munich, 1906–28) (= Brunner, *Rechtsgeschichte*).

V. Burrus, *The Making of a Heretic. Gender, Authority, and the Priscillianist Controversy* (Berkeley, 1995) (= Burrus, *Heretic*).

A. Cameron, 'Christian Conversion in Late Antiquity: Some Issues' in A. Papaconstantinou, N. McLynn and D. Schwartz (eds.), *Conversion in Late Antiquity: Christianity, Islam, and Beyond, Papers from the Andrew W. Mellon Foundation Sawyer Seminar, University of Oxford, 2009 — 2010* (Farnham, 2015), pp. 3 — 21 (= Cameron, 'Conversion').

E. Caspar, *Geschichte des Papsttums*, ii (Tübingen, 1933) (= Caspar, *Geschichte*).

H. Chadwick, 'The Origin of the Title "Oecumenical Council"', *JTS* New Series, vol. 23 (1972), pp. 132 - 135 (= Chadwick, 'Origin').

J. Champagne and R. Szramkiewicz, 'Recherches Sur Les Conciles Des Temps Mérovingiens', *Revue historique de droit français et étranger* vol. 49 no. 1 (January - March, 1971), pp. 5 - 49 (= Champagne & Szramkiewicz, 'Recherches').

M. T. Clanchy, 'Remembering the Past and the Good Old Law', *History* 55 (1970), pp. 165 - 76.

H. B. Clarke and M. Brennan (Eds.), *Columbanus and Merovingian Monasticism*, (Oxford, 1981).

P. Classen, *Kaiserreskript und Königsurkunde. Diplomatische Studien zum Problem der Kontinuität zwischen Antike und Mittelalter. Zwei Teile* (1955 & 1956) (= Classen, *Kaiserreskripte*).

D. Claude, 'Freedmen in the Visigothic Kingdom', in E. James ed. *Visigothic Spain: New Approaches* (Oxford, 1980), 159-189 (= Claude, 'Freedmen').

C. de Clercq, *La législation religieuse de Clovis à Charlemagne* (Louvain-Paris, 1936) (= de Clercq, *législation*).

S. Coates, 'Venantius Fortunatus and the image of episcopal authority in late antique and early Merovingian Gaul', *English Historical Review* 115:464 (2000) (= Coates, 'Venatius').

R. Collins,

— 'Visigothic law and regional custom in early medieval Spain', in W. Davies and P. Fouracre eds. *The Settlement of Disputes in Early Medieval Europe*, (Cambridge, 1986) (= Collins, 'Visigothic law');
— *Early Medieval Spain: Unity in Diversity, 400–1000* (London, 2nd ed. 1995) (= Collins, *Early Medieval Spain*);
— *Visigothic Spain, 409 - 711* (Oxford, 2004) (= Collins, *Visigothic Spain*).

M. Conrat (Cohn), *Geschichte der Quellen und Literatur des römischen Rechts im früheren Mittelalter* (Leipzig, 1889).

G. Constable, *Monastic Tithes From Their Origins To The Twelfth Century*, (Cambridge, 1964) (= Constable, *Tithes*).

S. Corcoran,
— 'The Sins of the Fathers: A Neglected Constitution of Diocletian on Incest', *Legal History*, vol. 21 no. 2 (August 2000), 1 - 34;
— 'From Unholy Madness to Right-mindedness: Or How to Legislate for Religious Conformity from Decius to Justinian', in A. Papaconstantinou, D. Schwartz and N. McLynn eds. *Conversion in Late Antiquity, Papers from the Andrew W. Mellon Foundation Sawyer Seminar, University of Oxford, 2009 - 2010* (Farnham, 2015), 67 - 95.

F. L. Cross, 'History and Fiction in the African Canons', *JTS*, 12 (October 1961), pp. 227-247 (= Cross, 'History').

C. Cubitt,
— *Anglo-Saxon Church Councils c.650 - c.850* (Leicester, 1995) (= Cubitt, *Church*);
— 'Bishops, priests and penance in late Saxon England', in *Early Medieval Europe* 14 (2006), 41 - 63 (= Cubitt, 'Bishops');
— '"As the Lawbook Teaches": Reeves, Lawbooks and Urban Life in the Anonymous Old English Legend of the Seven Sleepers', *English Historical Review* 124 (2009), pp. 1021 - 1049; (Cubitt, 'Seven Sleepers');
— 'The Lateran Council of 649 as an Ecumenical Council', in R. Price and M. Whitby eds. *Chalcedon in Context, Church Councils 400 - 700* (Liverpool, 2009; paperback 2011), 133 - 148 (= Cubitt, 'Lateran Council').

J. Cullen, 'The Development of the Appellate Jurisdiction of the Roman See', *Church History* vol. 57 (1988), pp. 29 - 42.

M. Czock, 'Practices of property and the salvation of one's soul: Priests as men in the middle in the Wissembourg material', in S. Patzold and C van Rhijn (eds.),

Men in the Middle, Local Priests in Early Medieval Europe (Berlin / Boston, 2016), 11 - 32.

W. Davies and P. Fouracre eds.,
— *The Settlement of Disputes in Early Medieval Europe*, (Cambridge, 1986) (= Davies & Fouracre, *Settlement*);
— *Property and Power in the Early Middle Ages,* (Cambridge, 1995) (= Davies & Fouracre, *Property*);
— *The Languages of Gift in the Early Middle Ages*, (Cambridge, 2010) (= Davies & Fouracre, *Gift*).

D. D'Avray,
— *Papacy, Monarchy and Marriage 860 - 1600* (Cambridge, 2015);
— 'Stages of papal law', Raleigh Lecture on History read 1 November 2016, in *Journal of the British Academy*, 5 (March 2017), pp. 37-59.

B. Daley, 'Position and Patronage in the Early Church: The Original Meaning of "Primacy of Honour"', JTS n. 44 (1993), pp. 529 – 53.

W. Daly,
— 'Caesarius of Arles a Precursor of Medieval Christendom', *Traditio: studies in Ancient and Medieval History, Thought and Religion* 26 (1970), 1-28 (= Daly, 'Caesarius');
— 'Clovis: How Barbaric, How Pagan?', *Speculum*, vol. 69, no. 3, (1994), 619 - 664 (= Daly, 'Clovis').

S. Diefenbach, '"Bischofsherrschaft" Zur Transformation der politischen Kultur im spätantiken und frühmittelalterlichen Gallien', in S. Diefenbach and G. Müller (eds.) *Gallien in Spätantike und Frühmittelalter, Kulturgeschichte einer Region* (Berlin/Boston, 2013), pp. 91 - 150 (= Diefenbach, 'Bischofsherrschaft').

G. Dilcher,
— *Normen zwischen Oralität und Schriftkultur: Studien zum mittelalterlichen Rechtsbegriff und zum langobardischen Recht* (Köln, 2008) (= Dilcher, *Normen*);
— 'The Germanists and the Historical School of Law: German Legal Science between Romanticism, Realism, and Rationalization' in *Rechtsgeschichte. Zeitschrift des Max-Planck-Instituts für europäische Rechtsgeschichte (/ Legal History. Journal of the Max Planck Institute for European Legal History)* n. 24 (2016), 20 - 72 (= Dilcher, 'Germanists').

G. Dilcher und E. Distler hg., *Leges - Gentes - Regna. Zur Rolle von germanischen*

Rechtswohnheiten und lateinischer Schrifttradition bei der Ausbildung der frühmittelalterlichen Rechtskultur (Berlin, 2006).

L. Dossey, 'Judicial Violence and Ecclesiastical Courts in Late Antique North Africa', in R. Mathisen (ed.) *Law, Society, and Authority in Late Antiquity* (Oxford, 2001), pp. 98 — 114 (= Dossey, 'Violence').

P. W. Duff, *Personality in Roman Private Law* (Cambridge, 1938).

L. Duchesne,
— *Fastes épiscopaux de l'ancienne Gaule*, 3 vols. (Paris, 2nd ed, 1907-15) (= Duchesne, *Fastes*).

B. Dumézil, 'La royauté mérovingienne et les élections épiscopales au VIe siècle', in J. Leemans, P. van Nuffelen, S. Keough and C. Nicolaye eds. *Episcopal Elections in Late Antiquity* (Berlin/Boston, 2011), 127 - 143.

G. Dunn,
— 'The Appeal of Apiarius to the Transmarine Church of Rome', *Journal of the Australian Early Medieval Association*, vol. 8 (2012), pp. 9 - 31 (= Dunn, 'Apiarius');
— 'Episcopal Crisis Management in Late Antique Gaul: The Example of Exusperius of Toulouse', in Antichthon 48 (2014), 126 - 143 (= Dunn, 'Exusperius');
— 'Flavius Constantius and Affairs in Gaul between 411 and 417*', *Journal of the Australian Early Medieval Association* 14 (2014), pp. 1 - 21 (= Dunn, 'Constantius');
— 'Collectio Corbeiensis, Collectio Pithouensis, *and the earliest collections of papal letters*', in B. Neil and P. Allen eds., *Collecting Early Christian Letters, From the Apostle Paul to Late Antiquity* (Cambridge, 2015), 175 - 205 (= Dunn, 'Collectio Corbeiensis');
— 'Innocent I on Heretics and Schismatics as Shaping Christian Identity', in G. Dunn and W. Mayer eds. *Christians Shaping Identity from the Roman Empire to Byzantium. Studies Inspired by Pauline Allen* (Leiden, 2015), pp. 266 - 293 (= Dunn, 'Innocent');
— 'Placuit apostolicae (Ep. 1) of Zosimus of Rome and the Ecclesiastical Reorganization of Gaul', in *Journal of Early Christian Studies* (2015), pp. 559 — 581 (= Dunn, 'Placuit');
— 'Innocent I and the First Synod of Toledo', in G. Dunn (ed.), *The Bishop of Rome in Late Antiquity* (Farnham, 2015), pp. 89 - 109 (= Dunn, 'Innocent').

M. Edwards, ‘Synods and Councils’, in in A. Casiday and F. Norris eds. *Cambridge History of Christianity* II, (Cambridge, 2008), 367 - 285.

M. Elliot, ‘New Evidence for the Influence of Gallic Canon Law in Anglo-Saxon England’, *The Journal of Ecclesiastical History*, vol. 64 (4), (2013), pp. 700 - 730 (= Elliot, ‘Influence’).

S. Esders,
— ‘Rechtsdenken und Traditionsbewusstsein in der gallischen Kirche zwischen Spätantike und Frühmittelalter. Zur Anwendbarkeit soziologischer Rechtsbegriffe am Beispiel des kirchlichen Asylrechts im 6. Jahrhundert’ in *Francia* 20/1 (1993), 97 - 125 (= Esders, ‘Rechtsdenken’);
— *Römische Rechtstradition und merowingisches Königtum, Zum Rechtscharakter politischer Herrschaft in Burgund im 6. und 7. Jahrhundert* (Göttingen, 1997) (= Esders *Rechtstradition*);
— '«Öffentliche» Abgaben und Leistungen im Übergang von der Spätantike zum Frühmittelalter: Konzeptionen und Befunde', in: Theo Kölzer / Rudolf Schieffer (Hg.), *Von der Spätantike zum frühen Mittelalter: Kontinuitäten und Brüche, Konzeptionen und Befunde, Ostfildern* 2009 (Vorträge und Forschungen 70), 189-244 (= Esders, Abgaben);
— 'Rechtliche Grundlagen fümittelalterliche Staatlichkeit der allgemeine Treueid’, in W. Pohl and V. Wieser (eds.) *Der frümittelalterliche Staat - Europäische Perspektiven*, Forschungen zur Geschichte des Mittelalters vol. 16 (2009) (= Esders, ‘Grundlagen');
— *Die Formierung der Zensualität. Zur kirchlichen Transformation des spätrömischen Patronatswesen im früheren Mittelalter* (Ostfildern, 2010) (= Esders, *Formierung*);
— '"Avenger of All Perjury” in Constantinople, Ravenna and Metz: Saint Polyeuchtus, Sigibert I, and the Division of Charibert’s Kingdom in 568’, in A. Fischer and I. Wood eds. Western Perspectives on the Mediterranean. Cultural Transfer in Late Antiquity and the Early Middle Ages, 400 - 800 AD (London, 2014), 17 - 41 (= Esders, ‘Avenger’).

J. Evans Grubbs, *Law and Family in Late Antiquity, The Emperor Constantine’s Marriage Legislation* (Oxford, 1995).

E. Ewig,
— 'Zum christlichen Königsgedanken im Frühmittelalter', in *Spätantikes und fränkisches Gallien. Gesammelte Schriften* 1 (1952-1973), ed. H. Atsma (Beihefte der Francia 3) (Zurich / Munich, 1976), 3 - 71;
— *Die Merowinger und das Frankenreich* (Stuttgart, 1988; 5th edition 2006).

S. Fanning,
— 'Emperors and empires in fifth-century Gaul', in Drinkwater & Elton eds., *Fifth Century Gaul: a crisis of identity?,* (Cambridge, 1992) 288–97 (= Fannig, 'Emperors');
— 'Clovis Augustus and Merovingian imitatio imperii', in Mitchell and Wood eds. *The World of Gregory of Tours* (Leiden, 2002), 321–35 (= Fannig, 'Clovis').

M. Fassler, 'Sermons, Sacramentaries, and Early Sources for the Office in the Latin West: The Example of Advent', in M. Fassler and R. Baltzer eds., *The Divine Office in the Latin Middle Ages: Methodology and Source Studies, Regional Developments, Hagiography* (Oxford, 2000), 15 - 48.

T. Faulkner, *Law and Authority in the Early Middle Ages: The Frankish Leges in the Carolingian Period* (Cambridge, 2016).

A. Ferreiro, 'Pope Siricius and Himerius of Tarragona (385): Provincial Papal Intervention in the Fourth Century', in G. Dunn ed., *The Bishop of Rome in Late Antiquity* (Farnham, 2016), 73 - 89.

R. Finn, *Almsgiving in the Later Roman Empire: Christian Promotion and Practice (313 – 450)*, (Oxford, 2006).

A. Fiery, *The Collectio Dionysiana* [http://ccl.rch.uky.edu/dionysiana-article] (Online 2008 accessed 4th January 2018) (= Fiery, *Dionysiana*).

A. Fiery and R. Reynolds, *Early Collections of Canon Law and their Manuscripts* (Toronto, 1993).

P. Fouracre,
— 'Placita' and the settlement of disputes in later Merovingian Francia, in W. Davies and P. Fouracre (Eds.), *The Settlement of Disputes in Early Medieval Europe*, (Cambridge, 1986), 23 - 43;
— 'Merovingian history and Merovingian hagiography' *Past and Present* 127, (1990);
— 'Carolingian Justice: The Rhetoric of Improvement and the Contexts of Abuse', *Sett. Spol.* 42 (1995), 771 - 803;
— 'The Nature of Frankish Political Institutions in the Seventh Century', in I. Wood (ed.) *Franks and Alamanni in the Merovingian Period: an Ethnographic Perspective*, (Rochester, 1998), 285 - 316.

— 'Frankia in the Seventh Century', *NCMH* Vol.I, (Cambridge, 2005);
— *'The use of the term beneficium in Frankish sources; a society based on favours?', in W. Davies and P. Fouracre (eds.) The Languages of Gift in the Early Middle Ages* (Cambridge, 2010), 62 - 89*;*
— *Frankish History: studies in the construction of power* (Farnham, 2013).

P. Fouracre and R.A. Gerberding, *Late Merovingian France : history and hagiography, 640-720* (Manchester, 1996).

Fournier-Le Bras, *Histoire des collections canoniques en Occident depuis le Fausses Décretales jusqu'au Décret de Gratien*, 2Bde. (Paris, 1931-32).

L. Fowler-Magerl, *Clavis Canonum: Selected Canon Law Collections Before 1140* (Hanover, 2005).

Y. Fox,
— 'The bishop and the monk: Desiderius of Vienne and the Columbanian movement', in *Early Medieval Europe* (2012), 176 - 194;
— *Power and Religion in Merovingian Gaul, Columbanian Monasticism and the Frankish Elites* (Cambridge, 2014).

C. Gallagher, *Church Law and Church Order in Rome and Byzantium: A Comparative Study* (Aldershot, 2002).

F. L. Ganshof,
— 'Louis the Pious Reconsidered', *History* 42 (1957), pp. 171-80
— 'The Use of the Written Word in Charlemagne's Administration'; originally published (French) in *Le moyen age* 57, translated by J. Sondheimer, *The Carolingians and the Frankish Monarchy* (London, 1971), pp. 125-42
— 'The institutional framework of the Frankish monarchy: a survey of its general characteristics', Trans. J. Sondheimer, *The Carolingians and the Frankish Monarchy* (London, 1971), pp. 186-111

J. Gaudemet,
— *La formation du droit séculier et du droit de l'Église aux IVe et Ve siècles* (Paris, 1957) (= Gaudemet, *formation*);
— 'Collections canoniques et codifications', *Revue de droit canonique* 33 (1983), 81 – 109 (= Gaudemet, 'Collections');
— *Les Sources du Droit de l'Église en Occident du IIe au VIIe Siècle*, (1985) (= Gaudemet, *Sources*);
— *L'Église dans l'Empire Romain (IV - Ve siècles),* 2nd ed. (Paris, 1989) (

Gaudemet, *L'Église*);

D. Ganz, 'The ideology of sharing: apostolic community and ecclesiastical property in the early Middle Ages', in W. Davies and P. Fourace (eds.), *Property and Power in the Early Middle Ages,* (Cambridge, 1995), 17 - 30 (= Ganz, 'ideology').

P. Geary,
— *The Myth of Nations*, (Princeton N.J., 2003);
— 'Extra-Judicial means of Conflict Resolution', *Sett. Spol.* 42 (1995), pp.569-605;
— 'Ethnic identity as a situational construct in the Early Middle Ages', *Mitteilungen der anthropologischen Gesellschaft in Wien* 133 (1983).

C. Geertz, 'Religion as a Cultural System', in *The Interpretation of Cultures* (London, 1975).

S. Gilsdorf, *The Favor of Friends, Intercession and Aristocratic Politics in Carolingian and Ottonian Europe* (Leiden, 2014).

M. Girardet,
— 'Gericht über den Bischof von Rom. Ein Problem der kirchlichen und der staatlichen Justiz in der Spätantike (4.-6. Jahrhundert)', *Historische Zeitschrift*, bd. 259, (1994), pp. 1 - 38;
— *Der Kaiser und sein Gott: Das Christentum im Denken und der Religionspolitik Konstantins des Grossen* (Berlin, 2010).

M. Gluckman,
— 'The Peace in the Feud', in his *Custom and Conflict in Africa* (Oxford, 1956);
— *Politics*, *Law and Ritual in Tribal Society* (Oxford, 1965).

M. Gorman, *Manuscripts and Libraries in the Age of Charlemagne* (Cambridge 1994).

E. Gräsmuck, *Coercitio. Staat und Kirche im Donatistenstreit* (Bonn, 1964) (= Gräsmuck, *Coercito*).

R. Greer, 'Pastoral care and discipline', in A. Casiday and F. Norris eds. *Cambridge History of Christianity* II, (Cambridge, 2008) (= Greer, 'discipline').

C. Grey, 'Two Young Lovers: An Abduction Marriage and its Consequences in Fifth-Century Gaul', *The Classical Quarterly, New Series* vol. 58 (2008), pp. 286 - 302.

J. Griffiths, 'What is legal pluralism?' *Journal of Legal Pluralism and Unofficial Law*, (1986) n.24, pp. 1 – 55.

L. Grig, 'Approaching Popular Culture in Late Antiquity: Singing in the Sermons of Caesarius of Arles', in *Studia Patristica* vol. LXIX: *Papers presented at the Sixteenth International Conference on Patristic Studies held in Oxford 2011* ed. M. Vinzent (Leuven, 2013), 197 – 205.

J. Grubbs, 'Virgins and Widows, Show-Girls and Whores: Late Roman Legislation on Women and Christianity' in Mathisen (ed.) *Law, Society, and Authority in Late Antiquity* (Oxford, 2001), pp. 220 - 240.

S. Hähnchen, *Rechtsgeschichte von der Römischen Antike bis zur Neuzeit* 4. Auflage (2012).

D. Haines, (ed.), *Sunday Observance and the Sunday Letter in Anglo-Saxon England* (Cambridge, 2010).

G. I. Halfond,
— *The Archaeology of Frankish Church Councils, AD 511 − 768*, (Leiden, 2010);
— '*Sis Quoque Catholicis Religionis Apex*: The Ecclesiastical Patronage of Chilperic and Fredegund', in *Church History* 81:1 (March, 2012).

S. Hall, 'The organization of the Church', ch. 24 in A. Cameron, B. Ward-Perkins and M. Whitby eds. *The Cambridge Ancient History vol. 14 Late Antiquity: Empire and Successors, AD 425 - 600*, 731 - 744 (= Hall, 'Organization').

G. Halsall,
— *Settlement and Social Organisation, the Merovingian region of Metz* (Cambridge, 1995) (= Halsall, *Settlement*);
— *Barbarian Migrations and the Roman West, 376 - 568* (Cambridge, 2007) (= Halsall, *Migrations*);
— 'The Barbarian Invasions', Ch.2 in P. Fouracre ed. NCMH (Cambridge, 2008), 35-55 (= Halsall, 'Invasions');
— 'Ethnicity and early medieval cemeteries', J. Quirós Castillo ed. *Archaeology and Ethnicity. Reassessing the "Visigothic necropleis" Arqueología y Territorio Medieval* 18 (2011), 15-27.

B. Hamilton, 'Religion and the Laity' in *NCMH*, 499 - 533.

J. Hannig, *Consensus Fidelium. Früfeudale Interpretationen des Verhältnisses von Königtum und Adel am Beispiel des Frankenreiches* (Stuttgart, 1982) (= Hannig, *Consensus*).

J. Harries
— 'Church and State in the Notitia Galliarum', *The Journal of Roman Studies*, 68 (1978), 26 - 43 (= Harries, 'Notitia');
— *Sidonius Apollinaris and the Fall of Rome, AD 407 - 485,* (Oxford, 1994) (= Harries, *Sidonius*);
— *Law and Empire in Late Antiquity*, (Cambridge, 1999) (= Harries, *Law*);
— 'Not the Theodosian Code: Euric's Law and Late Fifth-Century Gaul', in W. Mathisen and D. Shanzer eds. *Society and Culture in Late Antique Gaul, Revisiting the Sources*, (Ashgate Aldershot, 2001), 39 - 52 (= Harries, 'Euric')

J. Harries and I. Wood eds., *The Theodosian Code*, (London, 1993).

C. Harrison, C. Humfress, and I. Sandwell (eds.), *Being Christian in Late Antiquity: A Festschrift for Gillian Clark* (Oxford, 2014).

W. Hartmann,
— 'Der Bischofs als Richter Nach den kirchenrechtlichen Quellen des 4. bis 7. Jahrhunderts', in *La Giustizia Nell' Alto Medioevo* (1994), 805-842;
— *Kirche und Kirchenrecht um 900, Die Bedeutung der spätkarolingischen Zeit für Tradition und Innovation im kirchlichen Recht* (Hannover, 2008).

W. Hartmann, and K. Pennington (eds.) *The History of Medieval Canon Law in the Classical Period, 1140-1234: From Gratian to the Decretals of Pope Gregory IX*, (Washington, D.C., 2008).

A. Hauck, *Kirchengeschichte Deutschlands. V Bände* (Leipzig, 1903 – 1912) (= Hauck, *Kirchengeschichte*).

P. Heather,
— *The Goths*, (Oxford, 1996) (= Heather, *Goths*);
— *The Fall of the Roman Empire: a new history of Rome and the barbarians* (Oxford, 2005) (= Heather, *Fall*);
— 'Ethnicity, Group Identity and Social Status in the Migration Period,' in I. Garipzanov, P. Geary and P. Urbanczyk eds., *Franks, Northmen and Slavs,*

Identities and State Formation in Early Medieval Europe Vol. 5, (Turnhout Brepols, 2008), 17-51 (= Heather, 'Ethnicity');
— *Empires and Barbarians: the fall of Rome and the Birth of Europe* (Oxford, 2010) (= Heather, *Empires*);
— 'Law and Society in the Burgundian Kingdom', in A. Rio ed., *Law, Custom, and Justice in Late Antiquity and the Early Middle Ages* (London, 2011), 113-53 (= Heather, 'Law');
— *The Restoration of Rome: Barbarian Popes & Imperial Pretenders*, (London, 2013) (= Heather, *Restoration*).

C. Hefele, (trans. & ed. T. Clark), *A History of the Councils of the Church: from the original documents*, Vol. IV (Edinburgh, 1895).

M. Heinzelmann,
— *Bischofsherrschaft in Gallien: Zur Kontinuität römischer Führungsschichten vom 4. bis zum 7. Jahrhundert. Soziale, prosopographische und bildungsgeschichtliche Aspekte*, (München, 1976) (= Heinzelmann, *Bischofsherrschaft*);
— 'Bischof und Herrschaft vom spätantiken Gallien bis zu den karolingischen Hausmeiern. Die institutionellen Grundlagen', in F. Prinz (ed.) *Herrschaft und Kirche: Beiträge zur Entstehung und Wirkungsweise episkopaler und monasticher Organizationsformen* (Stuttgart, 1988), 23 - 83 (= Heinzelmann, *Bischof und Herrschaft*);
— "The 'affair' of Hilary of Arles (445) and Gallo-Roman identity in the fifth century,' in Y. Hen (ed.) in *Fifth Century Gaul*, (1992), 239 – 251 (= Heinzelmann, 'Hilary');
— 'Heresy in Books I and II of Gregory of Tours' *Historiae*', in A. Murray ed. *After Rome's Fall: Narrators and Sources of Early Medieval History. Essays Presented to Walter Goffart* (Toronto, 1998) (= Heinzelmann, 'Heresy');
— *Gregory of Tours, History and Society in the Sixth Century* (Cambridge, 2001), originally published as *Gregor von Tours (538 - 594): Zehn Bücher Geschichte, Historiographie und Gesellschaftskonzept im 6. Jahrhundert,* trans. C. Carroll (= Heinzelmann, *Gregory*).

Y. Hen,
— *Culture and Religion in Merovingian Gaul, A.D. 481 - 751* (Leiden, 1995) (= Hen, *Culture*);
— 'The Christianisation of Kingship', in M. Becher und J. Jarnut (eds.) *Der Dynastiewechsel von 751, Vorgeschichte, Legitimationsstrategien und Erinnerung* (Münster, 2004) 163 — 178 (= Hen, 'Christianisation');
— 'The Church in Sixth Century Gaul', in A. C. Murray ed. *A Companion to*

Gregory of Tours (Leiden, 2016), 232 - 255 (= Hen, 'Church').

J. Herrin, *The Formation of Christendom*, (Princeton, 1989) (= Herrin, *Formation*).

E. Herrmann, *Ecclesia in Re Publica. Die Entwicklung der Kirche von pseudostaalicher zu staatlich inkorporierter Existenz* (Frankfurt/Bern, 1980).

H. Hess, *The Early Development of Canon Law and the Council of Serdica*, 2nd Edition (Oxford, 2002).

R. H. Helmholz, 'Excommunication in Twelfth Century England', in *Journal of Law and Religion* 11, no. 1 (1994 - 1995), 235 - 253.

J. Hillner, 'Families, patronage and the titular churches of Rome, c.300 - c.600', in *Religion, Dynasty and Patronage in Early Christian Rome, 300 - 900* (Cambridge, 2007), 225 - 262.

P. Hinschius, *Das Kirchenrecht der Katholiken und Protestanten,* IV vols. (Berlin, 1869 - 1897).

R. Hodges and B. Gobley (Eds.), *The Rebirth of Towns in the West, AD 700 – 1050* (Council for British Archaeology Research Report 68, London 1988), pp. 69-92.

E. A. Hoebel, *The Law of Primitive Man*, (Cambridge MA, 1954).

M. H. Hoeflich, 'Gelasius I and Roman Law: One Further Word', in *The Journal of Theological Studies* vol. 26, no. 1 (April 1975), pp. 114 - 119.

T. Honoré,
— Law in the Crisis of Empire 379 - 455 AD: the Theodosian Dynasty and its Quaestors, (Oxford, 1998) (= Honoré, *Law*).

P. Horden, 'The Earliest Hospitals in Byzantium, Western Europe and Islam', *The Journal of Interdisciplinary History*, vol. 35 no. 3, *Poverty and Charity: Judaism, Christianity, and Islam* (Winter, 2005), 361 - 389.

P. Horden and N. Purcell, *The Corrupting Sea: A Study of Mediterranean History* (Oxford, 2000).

C. Hornung, *Directa ad Decessorem. Ein kirchenhistorisch-philologischer Kommentar zur ersten Dekretale des Siricius von Rom* (Münster, 2011) (= Hornung, *Dekretale des Siricius*).

C. Humfress,
— 'Law and legal practice in the age of Justinian', in: M. Maas, ed., *The Cambridge Companion to the Age of Justinian*, (Cambridge, 2005), 161-184 (= Humfress, 'Law and legal practice');
— *Orthodoxy and the Courts in Late Antiquity*, (Oxford, 2007) (= Humfress, *Orthodoxy*);
— 'Bishops and Law Courts in Late Antiquity: How (Not) to Make Sense of the Legal Evidence', *Journal of Early Christian Studies*, vol. 19, No. 3 (Fall 2011), 375 - 400 (= Humfress, 'Bishops and Law Courts');
— "Thinking through Legal Pluralism: 'Forum shopping' in the Later Roman Empire" in Duindam, J., Harries, J., Humfress, C. and Hurvitz, N., *Law and Empire: Ideas, Practices, Actors* (Leiden, 2013), 225 - 251 (= Humfress, 'Legal Pluralism');
— 'A New Legal Cosmos: Late Roman Lawyers and the Early Medieval Church', in P. Linehan and J. Nelson eds., *The Medieval World* (London and New York, 2013), pp. 557 - 575 (= Humfress, 'Legal Cosmos');
— 'Telling Stories About (Roman) Law', in P. Dresch and J. Scheele eds. *Legalism: Rules and Categories* (Oxford scholarship online, 2015), pp. 79 - 104 (= Humfress, 'Telling Stories').

D. Hunter, *Marriage, Celibacy, and Heresy in Ancient Christianity: The Jovinianist Controversy* (Oxford, 2007) (= Hunter, *Marriage*).

F. Hyland, *Excommunication: Its Nature, Historical Development and Effects* (Washington D.C., 1928) (= Hyland, *Excommunication*).

M. T. G. Humphreys, *Law, Power, and Imperial Ideology in the Iconoclast Era, c.680 — 850*, (Oxford, 2015) (= Humphreys, *Law*).

E. James,
— 'Beati pacifici: Bishops and the Law in Sixth-Century Gaul', in J. A. Bossy, ed., *Disputes and Settlements: Law and Human Relations in the West* (Cambridge University Press, 1983), 25 — 46 (= James, 'Beati');
— 'Gregory of Tours and the Franks', in Alexander S. Murray, ed., *After Rome's Fall: Essays Presented to Walter Goffart* (Toronto: University of Toronto Press, 1999), 51 - 66 (= James, 'Gregory');
— 'Gregory of Tours and "Arianism"', in A. Cain and N. Lenski eds. *The Power of*

Religion in Late Antiquity (Farnham, 2009), 327 - 339 (= James, 'Gregory and Arianism');
— 'The Merovingians from the French Revolution to the Third Republic', Early Medieval Europe 20.4 (2012), 450 — 471 (= James, 'French Revolution').

N. James, 'Leo the Great and Prosper of Aquitaine: a Fifth Century Pope and his Advisor', in *JTS* (1993), pp. 554 - 584 (= N. James, 'Leo').

C. Jaser, *Ecclesia maledicens. Rituelle und zeremonielle Excommunikationsformen im Mittelalter* (Tübingen, 2013) (= Jaser, *Ecclesia*).

D. Jasper & H. Fuhrmann, *Papal Letters in the Early Middle Ages* (Washington DC, 2001) (Jasper & Fuhrmann, *Letters*).

D. Johnston, *The Roman Law of Trusts* (Oxford, 1988) (Johnston, *Trusts*).

A. H. M. Jones,
— 'Church Finances in the Fifth and Sixth Centuries', *The Journal of Theological Studies* vol. 11 (April, 1960), pp. 84 - 94 (= Jones, 'Finances');
— *The Later Roman Empire 284 - 602, A Social Economic And Administrative Survey*, 2 Vols. (Oxford, 1964) (= Jones, LRE).

M. de Jong,
— 'An unsolved riddle: early medieval incest legislation', in I. Wood (ed.), *Franks and Alamanni in the Merovingian period: an ethnographic perspective* (Woodbridge, 1998), 107-140 (= de Jong, 'Incest');
— 'The state of the church: ecclesia and early medieval state formation', in W. Pohl, V. Wieser (eds.) *Der frümittelalterliche Staat — Europäische Perspektiven* (2009), 241 — 254 (= de Jong, 'Ecclesia').

E. J. Jonkers, 'Application of Roman Law by Councils in the Sixth Century,' in *Tijdschrift voor Rechtsgeschiedenis* 20 (1952), pp. 340 - 343 (= Jonkers, 'Application').

B. Jussen, 'Liturgy and Legitimation or How the Gallo-Romans Ended the Roman Empire', in B. Jussen ed. P. Selwyn trans., *Ordering Medieval Society. Perspectives on Intellectual and Practical Modes of Shaping Social Relations* (Philadelphia, 2001), 147 - 200 (= Jussen, 'Liturgy').

R. Kaiser, 'Königtum und Bischofsherrschaft im frühmittelalterlichen Neustrien', in F. Prinz (ed.) *Herrschaft und Kirche: Beiträge zur Entstehung und*

Wirkungsweise episkopaler und monasticher Organizationsformen (Stuttgart, 1988), 83 - 108 (= Kaiser, 'Königtum').

B. Kasten, 'Stepmothers in Frankish legal life', J. Nelson (trans.) in P. Stafford, J. Nelson, J. Martindale (eds.) *Law, laity and solidarities, Essays in honour of Susan Reynolds* (Manchester, 2001), 47 - 68.

P. Kaufman, *Augustine's Leaders* (Eugene, OR, 2017).

C. Kelly, 'Narratives of Violence: Confronting Pagans', in A. Papaconstantinou, N. McLynn and D. Schwartz (eds.), *Conversion in Late Antiquity: Christianity, Islam, and Beyond, Papers from the Andrew W. Mellon Foundation Sawyer Seminar, University of Oxford, 2009 — 2010* (Farnham, 2015), pp. 143 — 161.

F. Kelly, *A Guide to Early Irish Law* (Dublin, 1988).

S. Kennell, *Magnus Felix Ennodius: a gentleman of the Church* (Ann Arbor, 2000).

L. Kéry, *Canonical collections of the early Middle Ages (ca. 400-1140) : a bibliographical guide to the manuscripts and literature* (Washington, 1999) (= Kéry, *Collections*).

S. Keynes, 'Church Councils, Royal Assemblies, and Anglo-Saxon Royal Diplomas', in G. R. Owen-Crocker and B. W. Schneider (eds.) *Kingship, Legislation, and Power in Anglo-Saxon England* (Manchester, 2013), 17 - 182 (= Keynes, 'Councils').

P. King, *Law and Society in the Visigothic Kingdom* (Cambridge, 1972) (= King, *Law*).

W. Klingshirn,
— *Caesarius of Arles: The Making of A Christian Community in Late Antique Gaul* (New York, 1994) (= Klingshirn, *Making*).

F. Kober, *Der Kirchenbann nach den Grundsätzen des canonischen Rechts* (Tübingen, 1857) (= Kober, *Kirchenbann*).

J. Kreiner, 'About the Bishop: The Episcopal Entourage and the Economy of Government in Post-Roman Gaul', *Speculum,* vol. 86 no. 2 (April 2011), pp. 321 - 360.

S. Kuttner,
— 'The scientific investigation of Medieval Canon Law', *Speculum* 24, no.4 (1949);
— *The History of Ideas and Doctrines of Canon Law in the Middle Ages*, (London, 1980);
— (Ed.) *Medieval councils, decretals and collections of canon law : selected essays* (London, 1980).

P. L'Huillier,
— 'Ecclesiology in the Canons of the First Nicene Council', in St Vladimir's Theological Quarterly vol. 27 (1983), pp. 119 - 131 (= L'Huillier, 'Ecclesiology');
— *The Church of the Ancient Councils, the Disciplinary Work of the First Four Ecumenical Councils* (New York, 1996) (= L'Huillier, *Church*).

T. Lambert, 'Theft, Homicide and Crime in Late Anglo-Saxon Law,' *Past and Present*, 214 (1) (2012), pp. 3 - 43.

J. C. Lamoreaux, 'Episcopal Courts in Late Antiquity', *Journal of Early Christian Studies*, Vol. 3, No. 2 (John Hopkins University Press, Summer 1995), pp. 143 - 167 (= Lamoreaux, 'Episcopal Courts').

P. Landau,
— 'Kanonisches Recht und römische Form: Rechtsprinzipien im ältesten römischen Kirchenrecht', in *Der Staat* vol. 32 (1993), pp. 553 - 568 (= Landau, 'Recht');
— 'Der Begriff *ordo* in der mittelalterlichen Kanonistik', in [I. Cruscius and H. Flachenecker eds. *Studien zum Prämonstratenserorden*, (Göttingen, 2003), pp. 185 - 199], reproduced in *Peter Landau Europäische Rechtsgeschichte und kanonisches Recht im Mittelalter. Ausgewählte Aufsätze aus den Jahren 1967 bis 2006 mit Addenda des Autors und Register versehen* (Freiburg, 2013), pp. 385 - 401 (= Landau, 'Begriff').

R. Lane-Fox, *Pagans and Christians: In the Mediterranean World from the Second Century AD to the Conversion of Constantine* (New York, 1987).

M. Lemosse, 'La lèse-majesté dans la monarchie franque', in *Revue du moyen âge latin* 2 (1946), pp. 5 - 24.

N. E. Lenski,
— 'Evidence for the Audientia episcopalis in the New Letters of Augustine', in R. W. Mathisen Ed. *Law, Society, and Authority in Late Antiquity* (Oxford, 2001),

11-33 (= Lenski, 'Audientia');
— 'Imperial Legislation and the Donatist Controversy: From Constantine to Honorius', in R. Miles ed. *The Donatist Schism, Controversy and Contexts*, (Liverpool, 2016), 166 - 220 (= Lenski, 'Legislation').

É. Lesne, *Histoire de la propriété ecclésiastique en France, I - III* (Lille, 1910, 1926, 1936) (= Lesne, *Hist. prop.*).

E. Levy,
— 'Reflections on the First "Reception" of Roman Law in Germanic States', *American Historical Review*, 48 no.1 (October 1942), 20 - 29;
— *West Roman Vulgar Law. The Law of Property* (Philadelphia, 1951).

D. Liebs,
— *Römische Jurisprudenz in Gallien, 2. bis 8. Jahrhundert* (Berlin, 2002);
— 'Römischrechtliche Glut für ein Bischofsgericht in Burgund: die "Epitome Parisina" der "Lex Romana Visigothorum"', in *XVI Convegno Internazionale in Onore di Manuel J. Garcia Garrido* (2007), 63 - 83;
— 'Roman Vulgar Law in Late Antiquity', in B. Sirks ed. *Aspects of Law in Late Antiquity: dedicated to A. M. Honoré* (Oxford, 2008), 35 - 53.

R. Lim, *Public Disputation, Power and Social Order in Late Antiquity* (Berkeley, 1995).

J. Limmer, *Konzilien und Synoden im spätantiken Gallien von 314 bis 696 nach Christi Geburt* (Frankfurt, 2004).

E. Loening, *Geschichte des deutschen Kirchenrechts*. (Strasbourg, 1878) (= Loening, *Geschichte*).

S. Loftus, 'Episcopal Elections in Gaul: The Normative View of the Concilia Galliae versus the Narrative Accounts', in J. Leemans, P. Van Nuffelen, S. Keough and C. Nicolaye eds. *Episcopal Elections in Late Antiquity* (Berlin / Boston, 2011), 423 - 436 (= Loftus, 'Elections');

S. T. Loseby, 'Bishops and cathedrals: order and diversity in the fifth-century urban landscape of southern Gaul', in J. Drinkwater & H. Eltons (eds.), *Fifth Century Gaul: a crisis of identity?,* (Cambridge, 1992), pp.144 - 156.

E. A. Lowe, *Codices latini antiquiores. A palaeographical guide to Latin manuscripts prior to the ninth century*, 12 vols., (Oxford 1934 -1971).

R. Macmullen, 'The Preacher's Audience (AD 350 - 400)', *JTS* 40 (1989), pp. 503 - 125.

H. Maine, *Ancient Law*: *its connection with the early history of society and its relation to modern ideas* (first published 1861, 10th ed. first published 1884, reprinted London, 1908).

S. MacCormack,
— 'Change and continuity in Late Antiquity: the Ceremony of the *Adventus*,' in *Historia* 21, (1972), pp. 721 - 52.
— *Art and Ceremony in Late Antiquity*, (Berkeley and Los Angeles, 1981).

R. MacMullen, *Christianizing the Roman Empire: AD 100 - 400* (Yale, 1984).

E. M. Makowski, *Canon Law and Cloistered Women: Periculoso and its Commentators, 1298 - 1545* (Washington, D.C., 1997).

A. Mardirossian, 'Canons d'Orient et royaume barbare. L'influence du droit canonique oriental sur la législation du concile d'Épaone', in *Revue historique de droit français et étranger* vol. 83, no. 3 (2005), pp. 355 - 384 (= Mardirossian, 'Canons').

M. Markauskas, *From Privilege to Proscription: The Transformation of Episcopal Conflict Across the Long Fourth Century. A thesis submitted to the University of Manchester for the degree of Doctor of Philosophy in the Faculty of Humanities 2015*. (Published Online, 2016), [https://www.escholar.manchester.ac.uk/uk-ac-man-scw:293736]. (= Markauskas, *Privilege*) (= Markauskas, *Proscription*).

R. A. Markus,
— 'The Sacred and the Secular: From Augustine to Gregory the Great', *JTS* 36, (April, 1985), 84 - 96 (= Markus, 'Sacred');
— 'The legacy of Pelagius: Orthodoxy, Heresy and Conciliation' in *The Making of Orthodoxy Essays in Honour of Henry Chadwick* ed. R. Williams (Cambridge, 1989), 214 - 34 (= Markus, 'Pelagius');
— *Gregory the Great and his World* (Cambridge, 1997) (= Markus, *Gregory*).

R. Markus and C. Sotinel, 'Introduction', in C. Chazelle and C. Cubitt eds. *The Crisis of the Oikoumene: The Three Chapters and the Failed Quest for Unity in the Sixth-Century Mediterranean* (Turnhout, 2007), 1 - 16. (= Markus and Sotinel)

J. Matthews,
— 'Interpreting the *Interpretationes* of the Breviarium', in: R. Mathisen (ed.), *Law, society, and authority in late antiquity*, (Oxford, 2001), 11 – 33 (Matthews, 'Interpretationes');
— *Laying Down the Law: a study of the Theodosian Code*, (New Haven, 2000) (= Matthews, *Law*).

R. W. Mathisen,
— 'Hilary, Germanus and Lupus: The Aristocratic Background of the Chelidonius Affair', *Phoenix* vol. 33 (1979), pp. 160 - 169;
— *Ecclesiastical Factionalism and Religious Controversy in Fifth Century Gaul*, (Washington, 1989) (= Mathisen, *Factionalism*);
— 'Barbarian Bishops and the Churches "in Barbaricis Gentibus" During Late Antiquity', *Speculum* Vol. 72., no.93 (1997), 664-697 (= Mathisen, 'Barbaricis Gentibus');
— 'The "Second Council of Arles" and the Spirit of Compilation and Codification in Late Roman Gaul', *Journal of Early Christian Studies,* Winter 1997, 510 - 553 (= Mathisen, 'Second Council of Arles');
— 'Between Arles, Rome and Toledo: Gallic collections of canon law in Late Antiquity' from *Fronteras Religiosas entre Roma, Bizancio, Damasco y Toledo. El Nacimiento de Europa y del Islam* (Siglos V-VIII), edited by S. Montero (Madrid, 1999) (= Mathisen, 'Arles and Toledo');
— 'Ricimer's Church in Rome: How an Arian Barbarian Prospered in a Nicene World', in A. Cain and N. Lenski eds. *The Power of Religion in Late Antiquity* (Farnham, 2009), 307-327 (= Mathisen, 'Ricimer');
— 'Desiderius of Cahors: Last of the Romans', in *Gallien in Spätantike und Frühmittelalter: Kulturgeschichte einer Region,* ed. S. Diefenbach und G. Müller (Berlin, 2013), 461 - 465 (= Mathisen, 'Desiderius');
— 'The Council of Turin (398/399) and the Reorganization of Gaul ca. 395/406', in *Journal of Late Antiquity* vol 6. no. 2 (2013), 264 - 307 (= Mathisen, 'Turin') (= Mathisen, 'Turin');
— '*C*hurch Councils and Local Authority: The Development of Gallic Libri canonum during Late Antiquity', in C. Harrison, C. Humfress, and I. Sandwell (eds.), *Being Christian in Late Antiquity: A Festschrift for Gillian Clark* (Oxford, 2014), pp.175 - 194 (= Mathisen, 'Councils');
— 'Barbarian "Arian", Clergy, Church Organization, and Church Practices', in G. Berndt R. Steinacher (eds.) *Arianism: Roman Heresy and Barbarian Creed* (Farnham, 2014), 145 - 193 (= Mathisen, 'Arian Clergy').

M. C. McCarthy, *The Rule for Nuns of St. Caesarius of Arles: a Translation with a*

Critical Introduction (Washington, D.C., 1960).

N. McLynn,
— *Ambrose of Milan: Church and Court in a Christian Capital* (Berkeley, 1994) (= McLynn, *Ambrose*);
— 'The Conference of Carthage Reconsidered', in R. Miles ed. *The Donatist Schism, Controversy and Contexts*, (Liverpool, 2016), 220 - 249 (= McLynn, 'Carthage').

R. McKitterick,
— *The Frankish Church and the Carolingian Reforms*, (London, 1977) (= McKitterick, *Church*);
— 'The scriptoria of Merovingian Gaul: a survey of the evidence', in H. Clarke and M. Brennan (eds), Columbanus and Merovingian Monasticism (Oxford, 1981) (= McKitterick, 'Scriptoria');
— "Knowledge of Canon Law in the Frankish Kingdoms before 789", *Journal of Theological Studies* 36 (1985) (= McKitterick, 'Knowledge');
— *The Carolingians and the Written Word* (Cambridge, 1989) (McKitterick, *Carolingians*).

R. Meens, 'The Historiography of Early Medieval Penance', in A. Fiery (ed.) *A New History of Penance* (Boston, 2008), 73 - 97.

M. Moore, *A Sacred Kingdom, Bishops and the Rise of Frankish Kingship, 300 - 850* (Washington, DC, 2011) (= Moore, *Kingdom*).

H. Mordek.
— *Kirchenrecht und Reform im Frankenreich : die Collectio Vetus Gallica, die älteste systematische Kanonessammlung des fränkischen Gallien* (Berlin, 1975) (= Mordek, *Kirchenrecht*);
— *Bibliotheca capitularium regum Francorum manuscripta*, MGH Hilfsmittel 15 (München, 1995) (= Mordek, *Bibliotheca*).

R. Morris, 'The problems of property', in T. Noble and J. Smith (eds.), *The Cambridge History of Christianity, vol. 3: Early Medieval Christianities, c. 600 - c. 1100* (Cambridge, 2008 / Online publication 2010), 327 - 344.

K. F Morrison, *The Two Kingdoms, Ecclesiology in Carolingian Political Thought*, (Princeton, 1964).

R.C. Mortimer, *Western Canon Law*, (London, 1953).

M. Mueller, *Saint Caesarius of Arles, Sermons* 3 Vols. (1977 reprint).

W. P. Müller & M.E. Sommar (Eds.), *Medieval church law and the origins of the Western legal tradition : a tribute to Kenneth Pennington* (Washington, D.C., 2006).

A.C. Murray,
— *Germanic Kingship Structure* (Toronto, 1983) (= Murray, *Kingship*);
— 'The position of the *grafio* in the constitutional history of Merovingian Gaul', *Speculum* 64 (1986), pp.787-805 (= Murray, 'Grafio');
— 'Immunity, Nobility, and the *Edict of Paris,' Speculum* 69 (1994), pp. 18 — 39 (= Murray, 'Immunity');
— 'Merovingian Immunity Revisited', *History Compass* 8 (2010), 913 - 28 (= Murray, 'Immunity Revisited').

L. Musset, *The Germanic Invasions, the making of Europe 400 - 600*, trans. & ed. E. James and C. James (London, 1975)

H. Nehlsen,
— 'Alarich II. als Gesetzgeber. Zur Geschichte der Lex Romana Visigothorum' in G. Dilcher, ed. *Studien zu den germanischen Volksrechten*. *Rechtshistorische Reihe*, vol. 1 (Frankfurt am Main, 1982), 143-203;
— 'Entstehung des öffentlichen Strafrechts bei den germanischen Stämmen,' in *Freiburger Festkolloquium zum fünfundsiebzigsten Geburtstag von Hans Thieme,* hrsg. K. Kroeschell (1983), 3 - 16 (= Nehlsen, 'Entstehung').

J. Nelson,
— 'National synods, kingship as office, and royal anointing: an early medieval syndrome', *Studies in Church History* 7 (1971), 41 - 59 reprinted in J. Nelson, *Politics as Ritual in Early Medieval Europe* (London, 1986), 239 - 257 (= Nelson, 'National synods');
— 'Law and Liturgy in the Political Thought of Hincmar of Reims', *English Historical Review* 92 (1977), 241 - 279; (= Nelson, 'Political Thought');
— 'On the Limits of the Carolingian Renaissance', *Studies in Church History* 14 (1977), 51-67, reprinted in J. Nelson, *Politics and Ritual in Early Medieval Europe*, (London, 1986), 49 - 67 (= Nelson, 'Limits');
— 'Queens as Jezebels: Brunhild and Balthild in Merovingian History', *Politics and Ritual in Early Medieval Europe* (London, 1986), pp. 1 - 48, first published in *Medieval Women*, ed. D. Baker (Oxford, 1978), pp. 31 - 78 (= Nelson, 'Jezebels');
— 'Legislation and consensus in the reign of Charles the Bald', in P. Wormald,

ed. *Ideal and Reality: Studies in Frankish and Anglo-Saxon Society presented to J.M. Wallace-Hadrill* (Oxford, 1983), pp.202 - 27 (= Nelson, 'Legislation');
— *Politics and Ritual in Early Medieval Europe* (London, 1986) (= Nelson, *Politics*);
— 'Kingship and Empire in the Carolingian World', in McKitterick (Ed.) *Carolingian Culture: emulation and innovation* (Cambridge, 1994), pp.52 - 72 (= Nelson, 'Kingship');
— 'Law and its applications' in T. Noble and J. Smith (eds.), *The Cambridge History of Christianity, vol. 3: Early Medieval Christianities, c. 600 - c. 1100* (Cambridge, 2008 / Online publication 2010), 299 - 326 (= Nelson, 'Law');
— 'Charlemagne and the bishops', in R. Meens, D. van Espelo, B. van den Hoven van Genderen, J. Raaijmakers, I. van Renswoude and C. van Rhijn eds., *Religious Franks. Religion and Power in the Frankish Kingdoms: Studies in Honour of Mayke de Jong* (Manchester, 2016), 350 - 370 (= Nelson, 'Charlemagne').

A. Nissl,
— Zur Geschichte des Chlotharischen Edicts von 614, in MIÖG (1894) 365 - 384 (Nissl, *Geschichte*).

T. F. X. Noble,
— *The Republic of St. Peter: the Birth of the Papal State 680 - 825*, (Philadelphia, 1984) (= Noble, *Republic*);
— 'Literacy and the papal government in late antiquity and the early middle ages', in R. McKitterick ed. *The Uses of Literacy in Early Medieval Europe*, (Cambridge, 1990) (= Noble, 'Literacy');
— 'Gregory of Tours and the Roman Church', in K. Mitchell and I. Wood (eds.) *The World of Gregory of Tours* (Leiden, 2002), pp. 145 - 163 (= Noble, 'Gregory');
— 'The Christian church as an institution', in T. Noble and J. Smith (eds.), *The Cambridge History of Christianity, vol. 3: Early Medieval Christianities, c. 600 - c. 1100* (Cambridge, 2008 / Online publication 2010), 247 - 274 (= Noble, 'Church').

D. Nodes, 'Avitus of Vienne's Spiritual History and the Semi-Pelagian Controversy, the Doctrinal Implications of Books I-III', *Vigiliae Christianae*, Vol.38, No. 2, 1984, pp. 185 - 195.

K. Noethlichs, 'Zur Einflussnahme des Staates auf die Entwicklung eines Christlichen Klerikerstandes. Schicht- und berufsspezifische Bestimmungen für den Klerus im 4. und 5. Jahrhundert in den spätantiken Rechtsquellen.' in *Jahrbuch für antike Christentum* (Münster, 1972), pp. 136 - 152.

P. Norton, *Episcopal Elections 250 - 600: Hierarchy and Popular Will in Late*

Antiquity (Oxford, 2007) (= Norton, *Elections*).

T. P. Oakley,
— 'The Cooperation of Mediaeval Penance and Secular Law', *Speculum* 7 (1932), 515 - 524;
— 'The Origins of Irish Penitential Discipline,' in *The Catholic Historical Review*, vol. 19, no. 3 (October, 1933), 320 - 332.

H. Ohme,
— *Kanon ekklesiastikos: die Bedeutung des altkirchlichen Kanonbegriffes* (Berlin / New York, 1998) (= Ohme, *Kanon*);
— 'Sources of the Greek Canon Law to the Quinisext Council (691/2): Councils and Church Fathers', in W. Hartmann and K. Pennington (eds.)*, The History of Byzantine and Eastern Canon Law to 1500* (Washington, 2012), 24 — 115 (= Ohme, 'Sources').

J. O'Donnell, 'Liberius the Patrician', *Traditio*, 37 (1981), pp. 31 – 72.

V. Escribano Pãno, 'Heresy and Orthodoxy in Fourth-Century Hispania: Arianism and Priscillianism' in K. Bowes and M. Kulikowski eds. *Hispania in Late Antiquity: Current Perspectives* (Leiden, 1005), 121-49.

A. Papaconstantinou, N. McLynn and D. Schwartz (eds.), *Conversion in Late Antiquity: Christianity, Islam, and Beyond, Papers from the Andrew W. Mellon Foundation Sawyer Seminar, University of Oxford, 2009 — 2010* (Farnham, 2015).

S. Patzold, 'Bischöfe als Träger der politischen Ordnung des Frankenreichs im 8./9. Jahrhundert' in W. Pohl, V. Wieser (eds.) *Der frümittelalter Staat — Europäische Perspektiven* (2009), 255 — 268.

K. Pennington, 'The Growth of Church Law', ch. 16 in A. Casiday and F. Norris eds., *The Cambridge History of Christianity, vol. II Constantine to c.600* (Online publication, 2008), 386 – 402 (= Pennington, 'Growth').

F. Pollock and F.W. Maitland, *The History of English Law to the Accession of Edward I* (2 Vols, reissue edited by S.F.C. Milsom, Cambridge, 1968).

O. Pontal, *Die Synoden im Merowingerreich*, (Paderborn, 1986) (Pontal, *Synoden*).

B. Pottier, '*Circumcelliones*, Rural Society and Communal Violence in Late Antique North Africa', in R. Miles ed. *The Donatist Schism, Controversy and Contexts*, (Liverpool, 2016), 142-166.

R. Price, 'The Three Chapters Controversy and the Council of Chalcedon', in C. Chazelle and C. Cubitt eds. *The Crisis of the Oikoumene: The Three Chapters and the Failed Quest for Unity in the Sixth-Century Mediterranean* (Turnhout, 2007), 17 - 37.

C. Rapp, *Holy Bishops in Late Antiquity. The Nature of Christian Leadership in an Age of Transition* (Berkeley, 2005) (= Rapp, *Bishops*).

H. Reimitz, '*Vir inlustres* und *omnes Franci*: Zur Gestaltung der feinen Unterschiede in historiographischen und diplomatischen Quellen der frühen Karolingerzeit', in A. Schwarz und K. Kaska heraus., *Urkunden – Schriften – Lebensordnungen. Neue Beiträge zur Mediävistik* (Wien, 2015), pp. 123 - 151.

P. Reynolds, *How Marriage Became One of the Sacraments* (Cambridge, 2016).

R. E. Reynolds,
— "Unity and Diversity in Frankish Canon Law Collections" in U.R. Blumenthal (ed.), *Carolingian Essays* (Washington DC, 1983);
— *Law and Liturgy in the Latin Church, 5th - 12th Centuries*, (Aldershot, 1994).

S. Reynolds, *Fiefs and Vassals: The Medieval Evidence Reinterpreted* (Oxford, 1994) (= Reynolds, *Fiefs*).

J. Richards, *The Popes and the Papacy in the Early Middle Ages 476 — 752* (London, 1979) (= Richards, *Popes*).

M. P. Richards, 'Elements of a Written Standard in the old English Laws', in J.B. Trahern Jr (Ed.), *Standardizing English: Essays in the History of Language Change* (Tennessee Studies in Literature 31, 1989).

P. Riché, *Education and Culture in the Barbarian West: Sixth through Eighth Centuries*, trans. J.J. Contreni (Columbia, SC, 1976).

A. Rio,
— 'Freedom and Unfreedom in Early Medieval Francia: The Evidence of the Legal Formulae', *Past & Present* no. 193 (2006), 7 - 40 (= Rio, 'Freedom');

— *The formularies of Angers and Marculf: two Merovingian legal handbooks* (Liverpool, 2008) (Rio, *Formularies*);
— *Legal Practice and the Written Word in the Early Middle Ages*, *Frankish Formulae, c.500 - 1000* (Cambridge, 2009) (= Rio, *Legal Practice*).

L. Roach, 'Law codes and legal norms in later Anglo-Saxon England', *Historical Research*, no. 86, 2013, 465 — 486.

T. Robinson, *Who Were the First Christians? Dismantling the Urban Thesis* (Oxford, 2017).

B. Rosenwein, *Negotiating Space. Power, Restraint, and Privileges in Early Medieval Europe* (Manchester, 1999) (= Rosenwein, *Negotiating*).

M. Rouche, *L'Aquitaine des Wisigoths aux Arabes, 418-781: Naissance d'une région* (Paris, 1979).

J. Rubin, 'Social Insurance, Commitment, and the Origin of Law: Interest Bans in Early Christianity,' *The Journal of Law and Economics*, vol. 52, no. 4 (November, 2009), pp. 761 - 786.

M. Salzman,
— *The Making of a Christian Aristocracy. Social and Religious Change in the Western Roman Empire* (Cambridge MA, 2002);
— 'Reconsidering a Relationship: Pope Leo of Rome and Prosper of Acquitaine', in G. Dunn (ed.), *The Bishop of Rome in Late Antiquity* (Farnham, 2015), 109 - 127.

C. Sànchez-Moreno Ellart, 'Law, "Vulgar"', in R. Bagnall, K. Bordersen, C. Champion, A. Erskine and S. Hueber (eds.) *The Encyclopedia of Ancient History*, 1st editon (Chichester, 2013), 3975 - 3978.

K. Schäferdiek,
— *Die Kirche in den Reichen der Westgoten und Suewen bis zur Errichtung der westgotischen katholischen Staatskirche*, (Berlin, 1967) (= Schäferdiek, *Kirche*);
— 'Das sogenannte zweite Konzil von Arles und die älteste Kanonessammlung der arelatenser Kirche,' ZRG *KA* 71 (1985), pp. 1 — 19 (= Schäferdiek, 'zweite Arles').

G. Scheibelreiter, 'Church structure and organisation' in P. Fouracre ed., *The*

New Cambridge Medieval History (Cambridge, 2008), 675-709 (= Scheibelreiter, 'Church').

B. Schneider, *Christliche Armenfürsorge: Von den Anfängen bis zum Ende des Mittelalters* (Freiburg, 2017).

S. Scholz, *Die Merowinger* (Stuttgart, 2015) (= Scholz, *Merowinger*).

W. Schönfeld, 'Die Xenodochien in Italien und Frankreich im frühen Mittelalter', in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung*, XII (1922), 1 – 54.

E. Schuler, 'Caesarius of Arles and the Development of the Ecclesiastical Tithe: From a Theology of Almsgiving to Practical Obligations', in *Traditio* 67 (2012), 43 - 69.

E. Schwarz, 'Die Kanonessammlungen der alten Reichskirche', *Gesammelte Schriften* 4 (1936), 159–275 (= Schwarz, 'Kanonessammlungen').

J. Schwyter, 'Syntax and Style in the Anglo-Saxon Law-Codes', in C. Ehler and U. Schaefer (Eds.) *Verschriftung und Verschriftlichung: Aspekte des Medienwechsels in verschiedenen Kulturen und Epochen* (Tübingen, 1998), pp.189-231

K. Sessa,
— 'Ursa's Return: Captivity, Remarriage, and the Domestic Authority of Roman Bishops in Fifth-Century Italy', *Journal of Early Christian Studies* vol. 19, no. 3 (2011), pp. 401 - 432 (= Sessa, 'Ursa');
— *The Formation of Papal Authority in Late Antique Italy: Roman Bishops and the Domestic Sphere* (Cambridge, 2012) (Sessa, *Formation*).

D. Shanzer,
— 'Dating the Baptism of Clovis: the bishop of Vienne vs. the bishop of Tours', *Early Medieval Europe* vol. 7, Issue 1, (1998), pp. 29 - 57 (= Shanzer, 'Baptism of Clovis');
— 'Incest and Late Antiquity — Décandence?', in M. Formisano and T. Fuhrer eds. *Décadence, "Decline and Fall" or "Other Antiquity"* (Heidelberg Universitätsvertrag accessed online 19th August 2016 https://www.academia.edu/8517800/_Incest_and_Late_Antiquity_Décadence_).

B. Shaw, *Sacred Violence: African Christians and Sectarian Hatred in the Age of*

Augustine (Cambridge, 2011).

M. Sheather, 'Theory and Practice in Ambrose: *De officiis* and the Political Interventions of the Bishop of Milan', in G. Dunn and W. Mayer eds. *Christians Shaping Identity from the Roman Empire to Byzantium. Studies Inspired by Pauline Allen* (Leiden, 2015), pp. 167 - 186.

H. Sieben, *Die Konzilsidee der alten Kirche* (Paderborn, 1979) (= Sieben, *Konzilsidee*).

H. Siems, 'Die Entwicklung von Rechtsquellen zwischen Spätantike und Mittelalter' in *Vorträge und Forschungen: Von der Spätantike zum frühen Mittelalter: Kontinuitäten und Brüche, Konzeptionen und Befunde*, Vol. 79 (2009), 245 - 285 (= Siems, *Entwicklung*).

C. Sogno, B. Storin and E. Watts (eds.) *Late Antique Letter Collections: A Critical Introduction and Reference Guide* (Oakland, 2017).

R. Somerville & B.C. Brasington, *Prefaces to Canon Law Books in Latin Christianity*, (London 1998).

C. Sotinel,
— 'The bishop's men: episcopal power in the city', [(*Le personnel épiscopal, enquête sur la puissance de l'éveque dans la cité) L'èvêque dans la cité: image et autorité), 1995,* eds. E. Rebillard and C. Sotinel (Collection de Ecole française de Rome 248). Rome: Ecole française de Rome, 1998, pp. 105 - 128], *Church and Society in Late Antique Italy and Beyond (Farnham, 2010),* VII*,* pp. 1 - 22.
— 'Vigilius in the *Liber Pontificalis*: a memory lost, or manipulated?' [*(Mémoire perdue ou mémoire manipulée: le Liber Pontificalis et la controverse des Trois Chapitres), L'usage du passé entre Antiquité tardive et Haut Moyen Age. Hommage à Brigitte Beaujard, eds. C. Sotinel and M. Sartre. Rennes, 2008, pp. 59 - 76*], *Church and Society in Late Antique Italy and Beyond* (Farnham, 2010), III, pp. 1 - 21.

R. Stark, *The Rise of Christianity, a Sociologist Reconsiders History* (Princeton, 1996).

C. Stephens, *Canon Law and Episcopal Authority: The Canons of Antioch and Serdica* (Oxford, 2015) (= Stephens, *Canon Law*).

S. Stein, 'Lex Salica', *Speculum*, 22 (1947), pp.113-134, 395-418.

T. Sternberg, *Orientalium More Sectus: Räume und Institutionen der Caritas des 5. bis 7. Jahrhunderts in Gallien* (Münster, 1991).

D. Strauch, *Mittelalterliches nordisches Recht: Eine Quellenkunde* (Berlin, 2016).

Teuffel, *History of Roman Literature, revised and enlarged by L. Schwabe,* authorised translation from the fifth German edition by G. Warr, vol. II, *The Imperial Period*, (London, 1892).

U. Stutz, *Geschichte des kirchlichen Benefizialwesens*, *von seinen Anfängen bis auf die Zeit Alexanders III.* (Berlin, 1895) (= Stutz, *Benefizialwesens*).

E. A. Thompson,
— 'The settlement of the barbarians in southern Gaul', JRS (1956), 46: 65–75; repr. in Thompson Romans and Barbarians: The Decline of the Western Empire, (1982), 23–37
— *The Early Germans* (Oxford, 1965);
— *The Goths in Spain* (Oxford, 1969);
— *Saint Germanus of Auxerre and the End of Roman Britain* (Woodbridge Boydell Press, 1984).

C. H. Turner,
— 'Chapter in the History of Latin Manuscripts', *JTS* 1 (1900), 435 - 41;
— 'Chapters in the history of Latin manuscripts, II: a group of manuscripts of canons at Toulouse, Albi and Paris', *JTS* 2 (1901), 266 - 73 (= Turner, 'Toulouse');
— 'Chapters in the History of Latin MSS III: The Lyons-Petersburg MS of Councils', *JTS* 4 (1903), 426 - 34 (= Turner, 'Lyons');
— 'The Organisation of the Church', ch. VI in J. Bury ed. *Cambridge Medieval History* Vol. 1 (Cambridge, 1911), 143 — 181 (= Turner, 'Organisation');
— 'Notes on the Apostolic Constitutions : The Apostolic Canons', *JTS* 16 (1915), 523–38 (= Turner, 'Apostolic');
— 'Arles and Rome, The first developments of Canon Law in Gaul' *JTS* 17 (1916), 236 - 247 (= Turner, 'Arles');
— 'The Corbie Manuscript (C), now Paris Lat.12097' *JTS* 30 (1929), 225- 237 (= Turner, 'Corbie');
— *Ecclesiae Occidentalis Monumenta Iuris Antiquissima* 2 tomes. (1899 - 1939) (= Turner, *EOMIA*).

K. Ubl,

— *Inzestverbot und Gesetzgebung: Die Konstruktion eines Verbrechens (300 - 1100)* (New York, 2008) (= Ubl, *Inzestverbot*);
— 'Eine Verdichtung der Lex Salica, Die *Septinas septem* der Handschrift Paris, BN, lat. 4411', in in: S. Dusil / G. Schwedler / R. Schwitter (Eds.), *Exzerpieren – Kompilieren – Tradieren. Transformationen des Wissens zwischen Spätantike und Frühmittelalter* (Millennium-Studien 64), (Berlin/Boston, 2017), 223-244.
— L'origine contestée de la loi salique. Une mise au point, in: *Revue de l'Institut français d'histoire en Allemagne* 1 (2009), 208–234.

K. Ubl and D. Ziemann, *Fälschung als Mittel der Politik? Pseudoisidore im Licht der neuen Forschung* (Hannover, 2015).

K. Uhalde,
— *Expectations of Justice in the Age of Augustine* (Philadelphia, 2007) (= Uhalde, *Expectations*);
— 'Juridical Administration in the Church and Pastoral Care in Late Antiquity', in A. Fiery (ed.) *A New History of Penance* (Boston, 2008), 97 — 120 (= Uhalde, 'Administration').

W. Ullmann,
— *The Growth of Papal Government in the Middle Ages, a Study in the Ideological Relation of Clerical to Lay Power* (London, 1955) (= Ullmann, *Papal Government*);
— 'Leo I and the Theme of Papal Primacy', JTS 11 (1960), pp. 26-51 (= Ullmann, 'Leo I');
— 'Public Welfare and Social Legislation in the Early Medieval Councils', in G. Cuming and D. Baker (eds.) *Studies in Church History, 7, Councils and Assemblies*, *Papers Read at the Eighth Summer Meeting and Ninth Winter Meeting of the Ecclesiastical History Society* (Cambridge, 1971), 1 - 39 (= Ullmann, 'Public Welfare');
— *A Short History of the Papacy in the Middle Ages* (1972, 1974 London);
— *Law and Politics in the Middle Ages, An Introduction to the Sources of Medieval Political Ideas,* (London, 1975) (= Ullmann, *Law*);

R. Van Dam,
— *Leadership and Community in Late Antique Gaul* (Berkely, 1985);
— 'Merovingian Gaul and the Frankish conquests', in P. Fouracre ed., The New Cambridge Medieval History, 193-231 (Cambridge 2008), 193-231.

M. Vessey, 'The origins of the *Collectio Sirmondiana*: a new look at the evidence', in J. Harries and I. Wood (Eds.) *The Theodosian Code: studies in the*

imperial law of late antiquity, (London, 1993), 178 - 199 (= Vessey, 'Origins').

P. Vinodgradoff, *Roman Law in Medieval Europe*, 2nd ed. (Oxford, 1929).

E. Vodola, *Excommunication in the Middle Ages* (Berkeley, 1986) (= Vodola, *Excommunication*).

K. Voigt, *Staat und Kirche von Konstantin dem Grossen bis zum Ende der Karolingerzeit* (Stuttgart, 1936) (= Voigt, *Staat*).

E. Volterra, 'Western Postclassical Schools', *The Cambridge Journal of Law*, Vol. 10, no. 2 (1949), pp. 196-207.

H. Wace & W. Piercy, *A Dictionary of Christian Biography and Literature, to the end of the sixth century A.D., with an account of the principle sects and heresies* (London, 1911).

D. Wagschal, *Law and Legality in the Greek East: The Byzantine Canonical Tradition, 381 - 883* (Oxford, 2015) (= Wagschal, *Law*) (= Wagschal, *Law*).

A. Wallace-Hadrill, 'The Roman Imperial Court: Seen and Unseen in the Performance of Power', in *Royal Courts in Dynastic States and Empires, a Global Perspective*, J. Duindam, T. Artan, M. Kunt eds. (Leiden, 2011), pp. 91-103.

J. M. Wallace Hadrill,
— *The Long-Haired Kings*, (London 1962);
— 'Archbishop Hincmar and the Authorship of *Lex Salica*', in *Long-Haired Kings*, pp.95-120;
— 'the Bloodfeud of the Franks', in *The Long-Haired Kings*, 121-47;
— *Early Germanic kingship in England and on the Continent* (Oxford, 1971);
— *The Frankish Church*, (Oxford, 1983) (= Wallace-Hadrill, *Church*).

B. Ward-Perkins, *The Fall of Rome and the End of Civilization* (Oxford, 2005).

J. van Waarden, 'Episcopal Self-Presentation: Sidonius Apollinaris and the Episcopal Election in Bourges AD 470', in J. Leemans, P. Van Nuffelen, S. Keough and C. Nicolaye eds. *Episcopal Elections in Late Antiquity* (Berlin / Boston, 2011), pp. 555 - 563.

A. Weckwerth, *Ablauf, Organisation und Selbstverständnis westlicher antiker Synoden im Spiegel ihrer Akten* (Bonn, 2007).

D. Whitelock, 'Wulfstan's Authorship of Cnut's Laws', EHR 70 (1955).

C. Wickham,
— *Early Medieval Italy: Central Power and Local Society, 400 - 1000* (1981);
— *Framing the Early Middle Ages*: *Europe and the Mediterranean 400 - 800* (Oxford, 2005) (= Wickham, *Framing*);
— *The Inheritance of Rome, a history of Europe from 400 to 1000* (London, 2009).

R. Williams, 'Arianism', in E. Ferguson ed. *Encyclopedia of Early Christianity* (New York, 1997), 107-11.

H. Wolfram, 'The Goths in Aquitaine', *German Studies Review*, vol. 2 (1979), pp. 153 - 168.

I. Wood,
— 'The Ecclesiastical Politics of Merovingian Clermont' in *Ideal and Reality in Frankish and Anglo-Saxon Society*, ed. P. Wormald (Oxford, 1983), 34-57 (= Wood, 'Clermont');
— 'Gregory of Tours and Clovis', *Revue Belge de Philologie et d'Histoire* 63 (1985), 249 - 72 (= Wood, 'Gregory');
— 'Disputes in late fifth- and sixth-century Gaul: some problems', in W. Davies and P. Fouracre (Eds.), *The Settlement of Disputes in Early Medieval Europe*, (Cambridge, 1986), pp. 7 - 23 (= Wood, 'Dispute Settlement');
— 'Ethnicity and the ethnogenesis of the Burgundians', in W. Pohl and H. Wolfram eds. *Typen der Ethnogenese unter besonderer Berucksichtigung der Bayern* (Vienna, 1990), 53-69 (= Wood, 'Ethnicity');
— 'Administration, law and culture in Merovingian Gaul' in R. McKitterick ed. *The Uses of Literacy in Early Medieval Europe*, (Cambridge, 1990), 63 - 82 (= Wood, 'Administration');
— 'Letters and Letter-Collections from Antiquity to the Early Middle Ages: The Prose Works of Avitus of Vienne', in *The Culture of Christendom: Essays in Medieval History in Commemoration of Denis L. T. Bethell,* ed. M. A. Meyer, (London, 1993), 29-43;
— 'The *Codex Theodosianus* in Merovingian Gaul' from J. Harries and I. Wood, eds., The Theodosian Code (London, 1993), 159-177 (= Wood, 'Codex Theodosianus');
— *The Merovingian Kingdoms 450-751*, (London, 1994) (= Wood, *Kingdoms*);
— 'The Mission of Augustine of Canterbury to the English', *Speculum*, 69 (1994), pp. 1 - 17 (= Wood, 'Augustine');

— 'The barbarian invasions and first settlements', in A. Cameron and P. Garnsey eds., Cambridge Ancient History XIII: The Late Empire, AD 337 – 425 (Cambridge, 1998), 516-37 (= Wood, 'Invasions');
— 'Incest, Law and the Bible in sixth-century Gaul', *Early Medieval Europe* 7, 3 (1998), 291 - 303 (= Wood, 'Incest');
— *The Missionary Life: Saints and the Evangelisation of Europe, 400 - 1050* (Edinburgh, 2001) (= Wood, *Missionary Life*);
— 'The Franks and Papal Theology, 550 - 660', in C. Chazelle and C. Cubitt (eds.) *The Crisis of the Oikoumene, The Three Chapters and the Failed Quest for Unity in the Sixth-Century Mediterranean* (Turnhout, 2007), 223 - 243 (= Wood, 'Papal Theology');
— 'The governing class of the Gibichung and early Merovingian kingdoms', in W. Pohl and V. Wieser eds., *Der frühmittelalterliche Staat - Europäische Perspektiven* (Vienna, 2009), 11 - 22 (= Wood, 'Gibichung');
— 'Entrusting Western Europe to the Church, 400 - 750', in *Transactions of the Royal Historical Society* 23 (2013), 37 - 73 (= Wood, 'Entrusting');
— 'The Burgundians and Byzantium', in A. Fischer and I. Wood eds. *Western Perspectives on the Mediterranean. Cultural Transfer in Late Antiquity and the Early Middle Ages, 400 - 800 AD* (London, 2014), 1 - 17 (= Wood, 'Burgundians and Byzantium');
— 'The Transformation of Late Antiquity 1971 - 2015, *Networks and Neighbours Journal* (https://nnthejournal.wordpress.com ; accessed November 2017) (= Wood, 'Transformation').

S. Wood, *The Proprietary Church in the Medieval West*, (Oxford, 2006) (= S. Wood, *Proprietary Church*).

P. Wormald,
— 'The Decline of the Western Empire and the Survival of its Aristocracy', *Journal of Roman Studies* 66 (1976), 217-26 (= Wormald, 'Decline');
— '*Lex Scripta* and *Verbum Regis*: Legislation and Germanic Kingship, from Euric to Cnut', in P. Sawyer and I. Wood (eds.), *Early Medieval Kingship* (Leeds, 1977), 105-139 (= Wormald, 'Lex Scripta');
— 'The Age of Offa and Acluin', in J. Campbell, E. John and P. Wormald eds., *The Anglo-Saxons* (London, 1982), 101 - 132; (= Wormald, 'Offa');
— 'Bede, the *Bretwaldas* and the Origins of the *Gens Anglorum*', in P. Wormald, D. Bullough and R. Collins eds., *Ideal and Reality in Frankish and Anglo-Saxon Society* (Oxford, 1983), 99 - 130 (= Wormald, 'Gens Anglorum');
— 'Inter cetera bona–genti suae: law-making and peace-keeping in the earliest English kingdoms', Settimane dello studio del centro italiano di studi sull'alto medioevo, 42 (1995), 963–93 (= Wormald, 'inter cetera');
— 'Exempla romanorum: the earliest English legislation in context', in Ellergard,

A., and Åkerström-Hougen, Gunilla (eds.), Rome and the North (Jonsered, 1996), 15-27 (= Wormald, 'Exempla');
— *The Making of English Law Volume One: King Alfred to the Twelfth Century*, (Oxford, 1999) (= Wormald, *Making*);
— 'The leges barbarorum: law and ethnicity in the post-Roman West', in Goetz, Jarnut and Pohl (eds.) *Regna and Gentes: The Relationship between Late Antique and Early Medieval Peoples and Kingdoms in the Transformation of the Roman World* (Leiden, 2003), 21–53 (= Wormald, 'leges barbarorum');
— 'Kings and Kingship', Ch.21 in P. Fouracre ed. NCMH (Cambridge, 2008), 571-604 (= Wormald, 'Kings').

K. Zechiel-Eckes,
— *Die Concordia canonum des Cresconius, Studien und Edition*, 2 vol., (Frankfurt am Main, 1992) (= Zechiel-Eckes, *Cresconius*);
— *Die erste Dekretale : der Brief Papst Siricius' an Bischof Himerius von Tarragona vom Jahr 385 (JK 255)* (ed. D. Jasper),(Hanover, 2013) (= Zechiel-Eckes, *erste Dekretale*).